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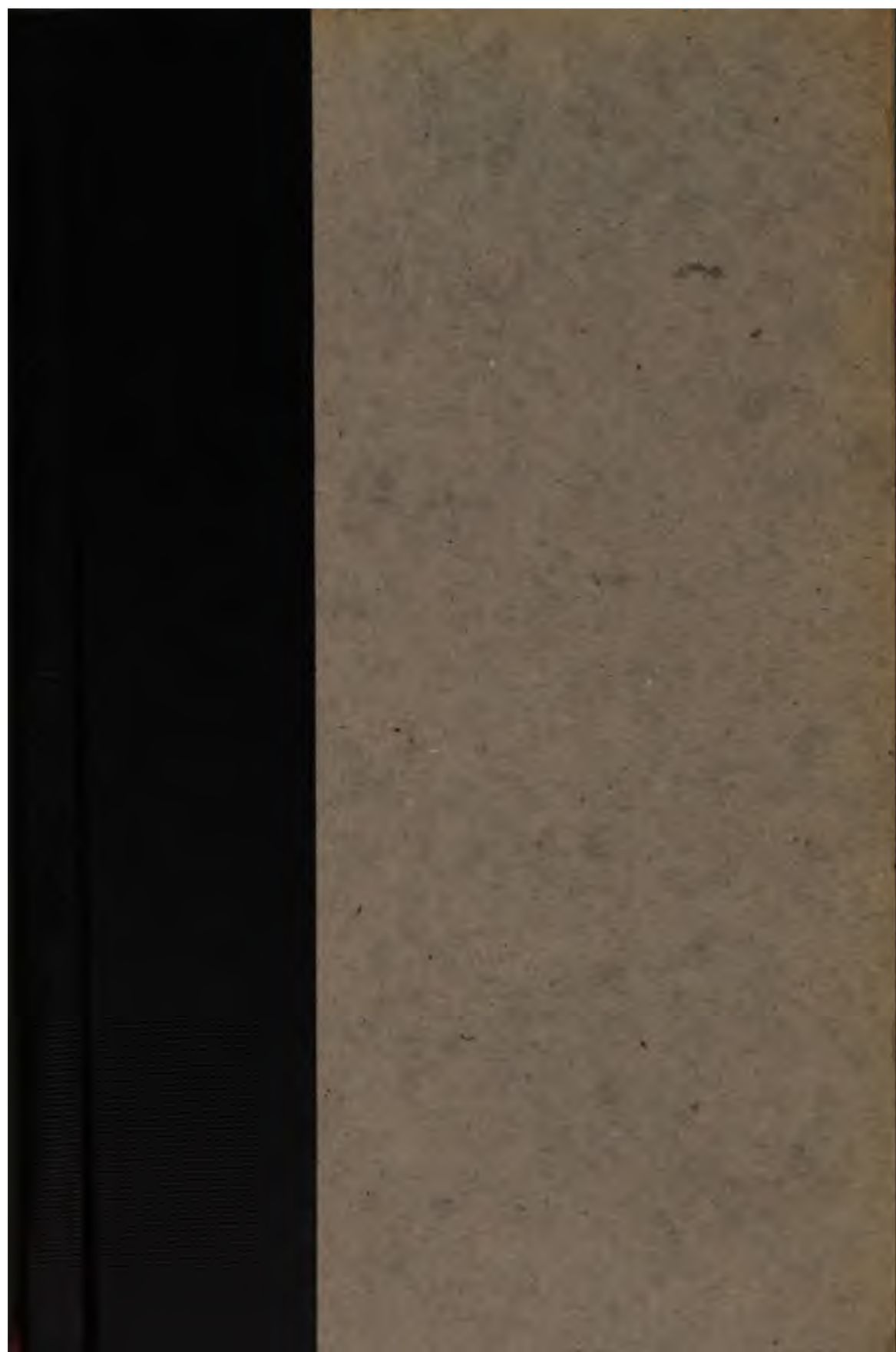
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INVESTIGATION

OF THE

DEPARTMENT OF THE INTERIOR

AND OF THE

BUREAU OF FORESTRY

HEARINGS HELD BEFORE
THE JOINT COMMITTEE OF CONGRESS

RELATIVE TO THE

INVESTIGATION OF THE DEPARTMENT OF THE
INTERIOR AND ITS SEVERAL BUREAUS, OFFI-
CERS, AND EMPLOYEES, AND OF THE BUREAU
OF FORESTRY, IN THE DEPARTMENT OF AGRI-
CULTURE, AND ITS OFFICERS AND EMPLOYEES

VOLUME III

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OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, Secretary.

NO. 18

**HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

MARCH 10, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

INVESTIGATION OF INTERIOR DEPARTMENT AND BUREAU OF FORESTRY.

THURSDAY, MARCH 10, 1910.

JOINT COMMITTEE TO INVESTIGATE THE INTERIOR
DEPARTMENT AND FORESTRY SERVICE,
Washington, March 10, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met, pursuant to adjournment, at 10 a. m.

Present, Senators Nelson (chairman), Sutherland, Root, Fletcher, and Purcell; Representatives McCall, Olmsted, Madison, and Graham; Mr. Paul Sleman, secretary; also Mr. Louis D. Brandeis and Mr. Joseph P. Cotton, jr., representing Mr. Louis R. Glavis; also Mr. George Wharton Pepper, representing Mr. Gifford Pinchot; also Messrs. John J. Vertrees and Carl Rasch, representing Secretary Ballinger; also Mr. E. C. Finney.

The CHAIRMAN. The committee will please come to order. The examination will proceed.

TESTIMONY OF JAMES RUDOLPH GARFIELD—Resumed.

Mr. PEPPER. Mr. Garfield, at the time of the adjournment you were giving your testimony in relation to the coal-land legislation which was pending in the winter of 1908 and 1909. I think you had said that there were certain measures which related to coal lands in Alaska only. Is that correct?

Mr. GARFIELD. Yes, sir.

Mr. PEPPER. Will you just state briefly what these measures were?

Mr. GARFIELD. The measures relating wholly to coal lands in Alaska were, first, the Cale bill; second, the Heyburn bill; and thirdly, the Mondell bill, which was different from the Mondell we were discussing at the last hearing. That was a bill introduced by Mr. Mondell at the same time that Senator Heyburn introduced his bill, and applied wholly to the Alaska situation.

Mr. PEPPER. Am I right then in understanding that the following were the three bills that applied exclusively to Alaska: First, a House bill called the Cale bill, which is the one Mr. Ballinger says that he had drafted; second, a Senate bill introduced by Senator Heyburn, and third, a House bill introduced by Mr. Mondell?

Mr. GARFIELD. That is correct.

Mr. PEPPER. And you distinguish these three on the one hand from another House bill introduced by Mr. Mondell which related to the coal situation generally and not exclusively to Alaska?

Mr. GARFIELD. That is a general coal bill considered by the House committee.

Mr. PEPPER. Could you state very briefly the net effect of each of those measures, of the three measures as they became a law?

Mr. GARFIELD. The net effect of the three measures was this: Under the Cale bill, by the last clause, bona fide locators could have consolidated their claims up to four sections, paying therefor the price of \$10 per acre. Under the preceding sections of the bill other locations, or new locations, could have been consolidated at the price of \$10 an acre, with various other provisions in the bill which were discussed at the last hearing, and which were, in brief, an attempted regulation against monopoly and separation of the surface from the coal. I think that is all of the general provisions.

Mr. PEPPER. If I may interrupt just for a moment—that is the bill respecting which Mr. Ballinger appeared before the House committee on March 3, 1908?

Mr. GARFIELD. It is.

Mr. PEPPER. And it was with respect to that, that an amendment was suggested as respects then future locations having regard to an increased price?

Mr. GARFIELD. An amendment was suggested that as to such locations the price was to be a minimum price, and was to be fixed by the Secretary of the Interior, but as stated in the hearing, which I believe is presented for the consideration of the committee here, the Commissioner of the General Land Office, Mr. Ballinger, stated that the \$10 per acre would apply to all existing locations and that the suggested amendment of his would apply only to the future locations.

Mr. PEPPER. Then what was the net result of the Heyburn bill?

Mr. GARFIELD. The Heyburn bill would have permitted the consolidation of all locations or entries in Alaska regardless of whether they were made in good faith or not, up to, I think, five sections, as I recall it, instead of four sections.

Mr. PEPPER. And at what price?

Mr. GARFIELD. At \$10 per acre.

Mr. PEPPER. And the net result of Mr. Mondell's Alaska bill is what?

Mr. GARFIELD. It was that all valid locations might be consolidated up to four sections at the price of \$10 per acre, and at that time there was a discussion before the House committee of how the word "valid" might be interpreted by the Interior Department.

Mr. PEPPER. Well, with those measures before it, what action did the Department of the Interior take, and what was the final outcome of that action?

The CHAIRMAN. Mr. Pepper, will you just allow me for my own benefit to ask one question? You recommended an amendment, as I recall it, to section 9 of one of those bills. Do you remember which bill it was?

Mr. GARFIELD. That, Senator Nelson, had to do with the general coal bill introduced by Mr. Mondell, and not to his Alaska bill, to which I have referred.

The CHAIRMAN. That is all. Mr. Pepper, you may proceed.

Senator ROOT. Mr. Pepper, let me get a certain thought straight in my mind.

Mr. PEPPER. Certainly.

Senator ROOT. Mr. Garfield, we have here in testimony a document which purports to be a report of hearings before the House Committee on Public Lands, on the 3d of March, 1908. It appears on page 1241
-timony.

Mr. GARFIELD. That was the hearing, Senator Root, upon the Cale bill, the first of the three measures which I have spoken of.

Senator ROOT. Now, over on page 1250 in a part of that hearing I see that Mr. Ballinger says:

I have some suggestions for amending the bill in some slight particulars which I will file with the committee.

The suggestions referred to are as follows:

It is suggested that the bill should be amended by adding to line 4, page 2, after the words "price of," the words "not less than," for the reason that it would appear that valuable deposits of anthracite coal, or lands containing large quantities of semi-bituminous coal, should not be disposed of at the same rate per acre as the lower grades of bituminous coal and lignites. By the amendment suggested the Department of the Interior will be enabled to classify and dispose of the coal deposits at prices commensurate with their ascertained value.

I wish that you would explain whether that conforms to the view which you advocated during this period of May, 1908, or how it differs.

Mr. GARFIELD. It in general conforms to the recommendations that I have made relative to the Alaska coal, namely, that as to future entries the Secretary of the Interior should have power to reclassify and revalue the Alaska coal in accordance with its market value, and that thereafter the new entries made could be consolidated up to the extent of four sections at the new classified price.

Senator ROOT. So that there was not any difference between you and the then commissioner, Mr. Ballinger, on that subject?

Mr. GARFIELD. Yes; there was.

Senator ROOT. That is what I want to get at. What was it?

Mr. GARFIELD. The difference as shown by this hearing was this, that Mr. Ballinger believed that the then existing locations made in Alaska should be permitted to consolidate up to four sections at the \$10 price, as he expressed it in the preceding portion of this same hearing, at the foot of page 1247, in answer to the questions by Representative Smith, which were as follows:

Mr. SMITH, of California. Do you not think it would be better for us to frame a law applicable only to the better grades of coal and leave the lignite question for consideration in another bill?

Mr. Ballinger answered:

Mr. BALLINGER. I would cover the whole thing by one measure and give some elasticity to the price of coal. For instance, in line 4, instead of fixing the price at \$10 I would say, "not less than \$10," but upon the coals already entered or located I would leave the price as it heretofore was, a flat price of \$10 an acre. As to the disposition of the coal areas under future legislation, I would leave that elastic, so that the higher grades of coal could be sold at a higher rate than \$10 an acre.

So that the difference between his proposition and mine was as to the existing locations. I did not believe that they should be perfected or consolidated into a larger area at the old price of \$10 an acre, unless they were made in good faith and for the benefit of the persons in whose names they were made.

Mr. GRAHAM. Would the Cunningham claims come within the purview of the language used there by Mr. Ballinger as coals already entered or located?

Mr. GARFIELD. They would, yes; as those entries had already been entered and had been passed as far as final receipt, as I recollect it.

Senator SUTHERLAND. May I ask you, Mr. Garfield, assuming that coal entries were made in good faith, speaking now of the Cunning-

ham coal entries, then the entrymen would have acquired a vested right in the coal claims, would they not?

Mr. GARFIELD. My position was this, that both as to those or any other claims that were made in good faith, were legal—that they might be perfected under the old law, if the entrymen saw fit to do it, and that they then would be in position to take advantage of a consolidation up to the limit provided by the new statute.

Senator SUTHERLAND. The point I was trying to get at was this: Assuming the entries to be in good faith then the entrymen would have acquired a vested right?

Mr. GARFIELD. That was my understanding.

Senator SUTHERLAND. That the final receipt was equivalent to a patent?

Mr. GARFIELD. No, sir; the final receipt was by no means equivalent to a patent. They were entitled to a final receipt upon the issuance of the patent provided that between the time of the final receipt and the application for the issuance of a patent the Government had not discovered anything that would lead it to believe that the patent ought not to be issued.

Senator SUTHERLAND. I am assuming that the entry was made in good faith, nothing that could induce anybody to believe that the law had been violated prior to the issuance of the final receipt.

Mr. GARFIELD. Yes, sir. If there was no ground upon which the Government could properly refuse, and the entry had gone as far as the final receipt, then, of course, the patent would follow.

Senator SUTHERLAND. Then in that case the final receipt would be equivalent to a patent.

Mr. GARFIELD. Yes, sir.

Senator SUTHERLAND. The issuance of a patent is simply evidence of title.

Mr. GARFIELD. Yes, sir.

Senator SUTHERLAND. After all I think I am correct. It would be evidence of title rather than the title itself. The point I want to get at is, that being so, assuming that to be so, then these entrymen would be entitled, as a matter of law, to have the land at the price fixed by the law, namely, \$10 an acre.

Mr. GARFIELD. Under the old law.

Senator SUTHERLAND. Under the old law Congress would have no power to increase the price, assuming the state of facts as I have already done.

Mr. GARFIELD. There are cases, as I recollect, that do give Congress the authority to take action at any time before patent is issued even under such cases.

Senator SUTHERLAND. To increase the price of land after the land to be paid for and final receipt issued?

Mr. GARFIELD. Or determine not to permit the patent to be perfected. But my position always was, Senator, under such circumstances as you have stated, that I believe there was a vested right, which the Government should protect, in the hands of the good-faith locator.

Senator SUTHERLAND. It would seem to me that must be so.

Mr. GRAHAM. By "protected" do you mean issuing the patent?

Mr. GARFIELD. I mean issuing the patent; yes, sir.

Senator SUTHERLAND. Then taking your view of this, in which I concur, Congress would have no power to increase the price of the land.

Mr. GARFIELD. I would not say that Congress has no power.

Senator SUTHERLAND. Certainly, after the patent has been issued, Congress would have no power.

Mr. GARFIELD. It would not.

Senator SUTHERLAND. If the final receipt is the equivalent of the patent, and the patent is merely evidence of title, then would it not be equally clear that Congress would have no power to increase the price after the final receipt had been issued?

Mr. GARFIELD. In view of some of the decisions of the Supreme Court, I think it is a question open at least to doubt, Senator.

Senator SUTHERLAND. At any rate, I take it from what you said, that even if Congress has the power you would not have favored the idea of increasing the price to those entrymen, assuming the state of facts to be as I have already assumed, after the final receipt had been issued.

Mr. GARFIELD. I agree with that, provided our definition of good faith is the same, and I think it is the same from what we have said here to-day.

Senator SUTHERLAND. Then that brings us to the point that the only reason, as I understand you, that you have in your mind for making the difference as to the price was that the parties were permitted to consolidate their claims under the new law.

Mr. GARFIELD. I did not quite catch your question.

Senator SUTHERLAND. Assuming these facts to be as I have stated, namely, that the entry was made in good faith, that final receipt had been issued, then the parties would get patent under the old law.

Mr. GARFIELD. Under the old law.

Senator SUTHERLAND. And if they went to patent under the old law would you not be in favor of Congress increasing the price even if it had power to do so?

Mr. GARFIELD. I had not considered that question because from the executive point of view I certainly would have issued patents under those circumstances.

Senator SUTHERLAND. I will get the state of your mind now. Were you then in favor of Congress doing that; do you think it would be right or proper for Congress to increase the price?

Mr. GARFIELD. It might be under certain circumstances; yes, sir.

Senator SUTHERLAND. Can you indicate to me any circumstances under which you think it would be proper.

Mr. GARFIELD. Yes; I think if it were found that under such conditions the interests of the public would be seriously injured, by permitting the property of the Government to be disposed of at a price that seemed to be inadequate, that Congress, if the power rested in it, might properly, under such cases as would protect the public interests—under such circumstances, there should be some compensation made to those who had proceeded under the old law.

Senator SUTHERLAND. By increasing the price of the land to such people, to be paid for land to which people had acquired a vested right.

Mr. GARFIELD. Under the circumstances I have indicated there might be conditions which would justify such an increase, but, as I

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Senator SUTHERLAND. By increasing the price of the land to such people, to be paid for land to which people had acquired a vested right.

Mr. GARFIELD. Under the circumstances I have indicated there might be conditions which would justify such an increase, but, as I

say, with proper compensation for any vested right that might have been acquired or any money that might have been expended in the perfection of that right up to that date.

Senator SUTHERLAND. Why were you in favor of increasing the price in this particular case?

Mr. GARFIELD. It was not confined to that particular case, Senator. The reason, I believe, for increasing the price was that under the existing law, applicable to the mainland coal, the Secretary then had the power to reclassify and increase the price, and I believe it ought to have been done. It was impossible under the Alaska law to do so, as the price was a flat \$10 an acre.

Senator SUTHERLAND. Were you in favor of increasing the price whether the party had proceeded under the old law or proceeded under the new law; you were in favor of increasing the price in either event?

Mr. GARFIELD. Under the new law, which I advocated, only good-faith entries could have been consolidated. Therefore they were in no better condition so far as price was concerned under the new law than under the old law, and that was based on what I have stated, that under the conditions at that time it was right to permit the good-faith locators to consolidate under the law at \$10 an acre.

Senator SUTHERLAND. At the flat price?

Mr. GARFIELD. At the flat price of \$10 an acre. Yes, sir.

Senator PURCELL. Mr. Garfield, do you understand that before a patent is issued that an entryman has a vested right in that land—before a patent is issued?

Mr. GARFIELD. Only to the extent I have indicated.

Senator PURCELL. Is it not a fact, Mr. Garfield, that he simply has an inchoate right, which may ripen into a vested right on the performance of certain things?

Mr. GARFIELD. It is what is termed an "equitable" right.

Senator PURCELL. Or an inchoate right?

Mr. GARFIELD. Yes, sir; it is a definition of terms.

Senator PURCELL. That differs from a vested right, does it not?

Mr. GARFIELD. Yes, sir.

Senator PURCELL. It is not nearly as strong or as valuable.

Mr. GARFIELD. You are right, in a strict definition of terms.

Senator PURCELL. Now, is it not a fact that an entryman does not get a vested right until he receives his patent?

Mr. GARFIELD. That is the final evidence of the completion of the transaction.

Senator PURCELL. Yes. Now, is it not more than that; is it not an actual transfer by the Federal Government to the entryman of its interest in those lands?

Mr. GARFIELD. Yes; but it may be canceled even after that upon showing for fraud.

Senator PURCELL. That is right in a case brought by the Attorney-General, however.

Mr. GARFIELD. Yes, sir.

Senator PURCELL. Yes. The Department of the Interior could bring that action.

Mr. GARFIELD. The Interior Department would initiate the action and present it to the Attorney-General for his action.

Senator PURCELL. Yes. Now, that being true in regard to the patent, that is not true in regard to the issuing of a final receipt.

Mr. GARFIELD. By no means.

Senator PURCELL. You always have control of it, while the final receipt is evidence of title to the entryman. Until patent issues it is in the jurisdiction of the Interior Department.

Mr. GARFIELD. Yes, sir.

Senator SUTHERLAND. Mr. Garfield, of course that is a question of law. I understand it to have been held uniformly that where the purchase price has been paid for the land and the final receipt had been issued that that was the equivalent of the patent, in so far as the homestead entryman in the case of a homestead might sell his land—might mortgage it if he could—and the deed would be good; is that not your understanding of it?

Mr. GARFIELD. No, sir, I think not, Senator. I think that a mortgagee or an assignee taking a title under those circumstances subjects himself to any equitable action that the Government might have against the original entryman, whereas if he takes it after patent issues there is quite a different interpretation of the law.

Senator SUTHERLAND. For fraud occurring prior to the final payment for the land the Government could refuse to issue the patent, or, having issued the patent, it could, for fraud occurring, set it aside, could it not?

Mr. GARFIELD. Prior to the issuance of a patent the Government would not be limited to the proof of fraud to refuse a patent. It might be mistaken. There might have been a mistake. That would not be fraud, but after the issuing of a patent the Government is then limited to the proof of fraud if it seeks to cancel.

Senator PURCELL. Yes; and the court has jurisdiction. Nobody else has jurisdiction but the courts.

Mr. GARFIELD. No one else.

Mr. GRAHAM. In that case I assume the Government's right of action would be limited to the patentee, not extending to an innocent purchaser or mortgagee.

Senator PURCELL. That is not true, however, before patent.

Mr. GRAHAM. That is after patent.

The CHAIRMAN. The rule is, and the Supreme Court has passed on it, that where the case has gone to final entry and the entryman has a final receipt, if up to that time he has complied with all the provisions of the law, and there is no fraud about it, he is the equitable owner of the land, absolutely entitled to a patent. That is the law passed upon by the Supreme Court.

Senator PURCELL. They go, as I understand it, Senator—

The CHAIRMAN. And they have no right in that case to refuse them a patent.

Senator PURCELL. But the question is in regard to the title. The title, however, does not pass from the Government until the patent is issued.

The CHAIRMAN. Not the legal title, but he is the equitable owner.

Senator PURCELL. Now, when the patent is issued it reverts back to the date of issuing the receipt you speak of, but until that patent issues, the Secretary of the Interior has control of that land and can set aside that receipt.

The CHAIRMAN. No; he can not, unless there is ground for it.

Senator PURCELL. Of course there must be ground for it.

Senator SUTHERLAND. I am not speaking of a legal title, but of a vested right. A man may have a vested right without taking a legal title.

Senator PURCELL. Surely, and they term those titles—at least our courts do—an inchoate right that may ripen into a vested right on the performance of certain things.

The CHAIRMAN. The Supreme Court had held that when final entry is made and the price paid and receipt issued, and the provisions of law complied with, that the entryman is the equitable owner and absolutely entitled to his patent.

Senator PURCELL. Yes; but there are cases, Senator, in court—and you remember them—where the receipt has been issued, and the entryman has borrowed money on it and he has sold the land to a third party, and yet the Interior Department has set aside that receipt and canceled his entry and thrown the land open to settlement to somebody else.

The CHAIRMAN. That is where the law has not been complied with. I am referring to cases where the law has been absolutely complied with.

Senator PURCELL. But as a matter of fact, the Interior Department always determines, and they determine that fact alone.

The CHAIRMAN. Where the man has absolutely complied with the law in every respect and has his final receipt he is entitled to a patent, and can secure it. It is simply a ministerial act.

Senator PURCELL. But the Interior Department determines the fact whether he has complied with the law or not, and their determination of that fact can not be reviewed by the courts.

The CHAIRMAN. Oh, yes; it can.

Senator PURCELL. Only on the question of law.

The CHAIRMAN. It can be determined. If the man has absolutely complied with the law the Interior Department has no right to withhold the patent.

Mr. PEPPER. Mr. Garfield, I understand that you are in no doubt about this point, that after locators have made applications for patents and have proved up and paid the coal-land price, and have obtained final receipt, and have not as yet obtained a patent in the interval, they have what has been denominated an equitable title, which is a disposable interest under the decision that the chairman has referred to.

Mr. GARFIELD. That is correct.

Mr. PEPPER. Whether or not it is a vested interest depends upon whether or not Congress has not the power to do the thing that you refer to, namely, to make the grant of the patent conditional upon payment of an enhanced price.

Mr. GARFIELD. That is the correct statement.

Senator SUTHERLAND. Would it not be equally true to put that the other way—if it is a vested interest Congress has no power to do it?

Mr. PEPPER. Yes, sir; if it is a vested interest, Mr. Garfield, then it imposes, among other things, that Congress could not take the vested property rights or make the retention of it dependent upon the payment of an enhanced price?

Mr. GARFIELD. That is quite right.

Mr. PEPPER. On the other hand, if it is not a vested right such congressional action would be proper.

Mr. GARFIELD. That is right.

Senator FLETCHER. May I ask one question there, Mr. Pepper?

Mr. PEPPER. Certainly.

Senator FLETCHER. Do you understand that after the final receipt has issued that the entryman has the right to go on the land and cut the timber from it or remove coal from it?

Mr. GARFIELD. No, sir; he has not.

Mr. PEPPER. Whichever way that question of vested right is determined, I understand you to say that in point of fact you did not at the time we are speaking of contemplate legislation increasing the price to be paid by those who had in good faith proved up their claims and became entitled to patent.

Mr. GARFIELD. That is correct.

Mr. PEPPER. With respect to such entries as might be determined not to have been made in good faith, your position was what?

Mr. GARFIELD. That those could not be consolidated unless they were consolidated and paid for at a price to be fixed by the Secretary upon a revaluation.

Mr. PEPPER. And your understanding of the provisions of the Cale bill and of the amendment suggested by Mr. Ballinger at the hearing is what on this point?

Mr. GARFIELD. That as to the existing locations, whether they were, as defined by the last section, good faith or not, could be consolidated at \$10 an acre—the old price.

Mr. PEPPER. Then, as a practical matter, as the Cunningham entries were either entries that had been made in good faith or not, if they were ultimately to be determined to have been made in good faith they might have come in under the old law, notwithstanding the Cale bill?

Mr. GARFIELD. They could.

Mr. PEPPER. On the other hand, if they were ultimately determined not to have been in good faith the entrymen had what right under that bill?

Mr. GARFIELD. Under the Cale bill they would have the right to have consolidated their entries up to 2,560 acres and pay therefor the sum of \$10 an acre and subjected themselves to the first provision of the Cale bill.

Mr. PEPPER. Now, then, having these various measures before it—and I refer to the three Alaska measures that have been mentioned—what action, if any, did the department take respecting the Alaska legislation?

Mr. GARFIELD. The action of the department is evidenced by the report which I sent to the Senate Committee on Public Lands, having reference to the Heyburn bill—Senate bill 6805, I believe.

The CHAIRMAN. You sent in a substitute bill.

Mr. GARFIELD. I sent in a substitute bill, which substitute bill was afterwards adopted by Congress and signed by the President, and that bill limited the consolidation to the entries that had been made in good faith and for the interest of the original entrymen.

The CHAIRMAN. And that is the measure which is now known as the act of May 28, 1908?

Mr. GARFIELD. It is.

Mr. PEPPER. What, if anything, in March, 1908, did you know about the authorship of the Cale bill?

Mr. GARFIELD. I did not know who drafted the Cale bill.

Mr. PEPPER. Where did you go on March 2, 1908?

Mr. GARFIELD. I was in Columbus, Ohio, at a meeting of the state convention.

Mr. PEPPER. And thereafter you returned to Washington, about when?

Mr. GARFIELD. I think about the 5th of March.

Mr. PEPPER. And did you receive shortly thereafter a letter from Mr. Ballinger?

Mr. GARFIELD. Yes, sir.

Mr. PEPPER. Is that the letter dated April 8?

Mr. GARFIELD. Yes, sir; it has already been introduced in evidence, I believe.

The CHAIRMAN. Can you give us a reference to that, Mr. Pepper?

Mr. PEPPER. I speak subject to correction, but I think it has not actually been printed in the record. It is, in point of fact, Exhibit D; if you will pardon me for a moment I will verify my recollection.

The CHAIRMAN. If it is printed in the record will you kindly give us a reference to it.

Mr. PEPPER. I will refer to it. My thought was that it had not been printed. I find that my recollection is correct. The document was, in point of fact, Exhibit D in Mr. Ballinger's letter to the President of November 15, 1909. Mr. Ballinger's letter is in the record, and the exhibit has been referred to but not yet offered.

The CHAIRMAN. Is there objection to that?

Senator PURCELL. What is the page of Mr. Ballinger's letter?

The CHAIRMAN. It is not in the record. The chair hears no objection; it is admitted.

Mr. BRANDEIS. The letter is in the record.

Senator PURCELL. What page is that on?

Mr. PEPPER. Mr. Ballinger's letter of November 15 is on page 1234 and following pages of the record.

Mr. JAMES. Is this letter that you are now going to introduce in the record?

Mr. PEPPER. It is not in the record, but it was, or a copy of it. It constituted an exhibit to that letter which was inclosed with it by Mr. Ballinger to the President and passed on to Mr. Pinchot.

The CHAIRMAN. Do you desire to have it read?

Mr. PEPPER. I will leave that to Mr. Vertrees. It ought to be read sooner or later.

Mr. VERTREES. I think it ought to be read.

Mr. PEPPER. Will you be kind enough to read it, Mr. Garfield?

Mr. Garfield then read letter of April 8, 1908, of Mr. Ballinger to Secretary Garfield. This letter in full appears hereafter as part of Exhibit D to Secretary Ballinger's letter to the President of November 15, 1909.

Mr. McCALL. Is there a reply to that letter?

Mr. PEPPER. Yes, sir; I was going to offer it.

Senator ROOT. What was the exhibit number of that?

Mr. PEPPER. That was Exhibit D in the letter of November 15, 1909, of Mr. Ballinger to the President.

Senator ROOT. I do not see any reference to Exhibit D in the record.

Mr. PEPPER. Mr. Chairman, when the letter of November 15, 1909, was read by Mr. Pinchot I, perhaps, made the mistake of ques-

tioning Mr. Pinchot respecting each individual section of it, after that section had been read, and before passing to a consideration of the next section. I think the stenographer found it impossible afterwards to print the letter consecutively and the comments independent of the section to which they related. Perhaps it would simplify the situation if the whole letter of November 15 were at this point printed in the record in its entirety. Of course it will involve duplication, but as it is at present it perhaps does not do justice to the letter of November 15 to have it in the shape in which it is.

Senator ROOT. Is that letter finished in the record? I have run along over the record and do not find it.

Mr. PEPPER. On 1261, Senator Root, I think the letter is finished. You will notice a section there which begins, "Referring further to the Cunningham claims," and then a paragraph that refers to Exhibit C—I am referring now to page 1261 of the testimony—and then he refers to the particular exhibit that we are now discussing, the Exhibit D, and then a few lines below he refers to Exhibit E, and then appears the Secretary's signature.

Senator ROOT. I see it now.

The CHAIRMAN. Your suggestion is to have the entire letter printed in the record?

Mr. PEPPER. To have the entire letter printed at this point.

The CHAIRMAN. With the inclosures?

Mr. PEPPER. Yes, sir.

Senator ROOT. I think that should be done, Mr. Chairman, because this letter appears in fragments.

Mr. PEPPER. I am taking the responsibility for it, because it had to be cut in such a way that was helpful in the examination, but it is misleading when you read the record.

Mr. JAMES. It had been agreed that it should be printed in its entirety before.

Mr. PEPPER. The reporter came to find out that without the comments it would have been unintelligible.

Mr. JAMES. I thought so at the time.

The CHAIRMAN. You had better read the other letter. I understood that you were about to introduce the reply from the Secretary.

Mr. PEPPER. I have just introduced the letter of April 8 from Mr. Ballinger to Mr. Garfield, and I now introduce Mr. Garfield's reply of April 16, which is the reply to this.

The CHAIRMAN. To this letter which has just been read?

Mr. PEPPER. Yes, sir, as well as Exhibit D to the letter of November 15.

The CHAIRMAN. They will all be printed.

Senator ROOT. The letter of November 15 and the exhibits?

The CHAIRMAN. The letter of November 15 and all the exhibits.

(The letter of November 15 and its exhibits are as follows:)

[PERSONAL.]

THE SECRETARY OF THE INTERIOR,
Washington, November 15, 1909.

SIR: In compliance with your direction, I herewith furnish you the facts requested respecting the matters covered by the letter of Hon. James R. Garfield, dated Cleveland, Ohio, November 8, 1909, addressed to you, and the letter of Hon. Gifford Pinchot, dated Washington, D. C., November 4, 1909, also addressed to you.

First: As to Mr. Garfield's letter.

It is apparent that there is an irreconcilable difference between his views of the law governing an administrative officer and those entertained by me, and nothing is gained by their repetition here. I am, however, convinced since reading these letters that the real animus against me lies in the fact that I have had to treat so many of my predecessor's acts as unsupported by law. In this particular I have taken no step which, in my judgment, was not the imperative duty of a conscientious official and required by my oath.

Regarding the assertions of Mr. Garfield respecting my conduct on the subject of water-power withdrawals, he is correctly informed that I regarded his blanket withdrawals, under the guise of reclamation withdrawals, where, in fact, they were not for reclamation purposes, as illegal. In working it out I could find no other solution except by way of restoration and rewithdrawal in the manner in which it was handled, and that to have the matter intelligently presented to Congress it was necessary to make new withdrawals, with sufficient data to determine what they were withdrawn for.

The only error I made in the whole affair was in not having the restorations and rewithdrawals made concurrently, which I would have done had I been as conversant with the facts then as I am now. The history, however, of this entire matter when fairly judged leaves no room for impugning my motives or of indulging in the opinion that I was coerced into the rewithdrawals. In all these particulars Mr. Garfield has been, by some officer or officers of the Reclamation Service, erroneously advised and an unfair and in some respects untruthful coloring given my relations to the same. In further confirmation of my statements in this respect I append for your examination copies of all the correspondence between the Reclamation Service and my office on this subject, as well as copies of the restorations recommended by Acting Director Davis and approved by me. (See Exhibit A hereto attached.)

The act of June 17, 1902, known as the "reclamation act," in terms provides for the withdrawal of public lands for the following purposes only:

"Sec. 3. That the Secretary of the Interior shall, before giving the public notice provided for in section 4 of this act, withdraw from public entry the lands required for any irrigation works contemplated under the provisions of this act, and shall restore to public entry any of the lands so withdrawn when, in his judgment, such lands are not required for the purposes of this act; and the Secretary of the Interior is hereby authorized, at or immediately prior to the time of beginning the surveys for any contemplated irrigation works, to withdraw from entry, except under the homestead laws, any public lands believed to be susceptible of irrigation from said works. * * *"

Assuming Mr. Garfield's doctrine of the supervisory authority of the Secretary of the Interior to suspend the public-land laws by executive withdrawals to be sound, which I do not admit, proper administration would not warrant the use of the Reclamation Service for a purpose in no manner related to the functions of that bureau and not within this act, as there is an implied prohibition against withdrawing lands thereunder except for the purposes specified. Furthermore, any expenditure of reclamation moneys in investigation of these withdrawals must be conceded by all as totally unwarranted, a fact which has since been demonstrated by the inability to procure (and properly so) through the Reclamation Bureau information concerning the status of Carey Act irrigation projects in the various States, the reason advanced by the acting director being that the bureau was not authorized to apply its funds to such purposes. The fact that another bureau of this department had an appropriation for this purpose and had data under which intelligent withdrawals could be made was another adequate reason for transferring to the Geological Survey the full authority in the premises and cleaning up the matter so far as the Reclamation Bureau was concerned.

When this subject was under consideration in the department, you will recall the fact that I took it up with you, and I am not aware of not giving you a full and "frank statement of facts" in this as in all other matters presented by me to you.

I have heretofore reported to you the method adopted by the Geological Survey in obtaining the necessary facts to support its withdrawals. This method refutes the further statement made by Mr. Garfield to the effect that the Geological Survey acted upon the "same kind of information as was used by the Reclamation Service," for the Geological Survey drew its information from data which had been acquired from several years of field investigation of land and water resources and data which it is continually acquiring on this subject. Also, the maps and other data heretofore exhibited to you demonstrate the inaccuracy of Mr. Garfield's assertion that the difference in quantity between the area of land withdrawn by him and that withdrawn during my administration is due to the elimination from the latter of entered lands. (Copies of these tables and maps are attached, marked "Exhibit B.")

The withdrawals made by Mr. Garfield were generally in pursuit of a theory that the Executive was vested with a power to do any and all things which in his judgment might be proper to be done in the absence of specific constitutional or legislative prohibition, and did not truthfully show what they were made for; whereas the withdrawals which have been made during my incumbency have shown what they were made for, and have been accompanied by the express declaration that they were for the purpose of enabling Congress to adopt legislation in regard thereto. I have not adopted any subterfuge in this respect.

The question as to the issuance of patents to persons who have made entries of lands during the interval between restoration and withdrawal has been repeatedly passed upon by the courts. Such withdrawals, if legal, will prevent the effectiveness of inchoate rights. Aside from this, however, after three careful searches of the Land Office records, no such entries have been found, and the question is largely academic.

As regards the issuance of cooperative certificates in work under reclamation projects, the Attorney-General has rendered two separate opinions declaring their issuance unauthorized by law, of which you are fully advised. The comptroller has likewise ruled on their invalidity.

Mr. Garfield has, so far as I know, made no effort to learn the real facts relating to any of these matters or to justly estimate my motives in connection therewith, which I very much regret, in view of our long friendship and in view of the fact that upon my retirement from the General Land Office he expressed to me in writing his appreciation of my services to the Government, and at which time he evidently believed that my motives in all matters affecting the public service were of the highest character. I attribute the change of spirit to the influence of others who have poisoned his mind with untruths. I have consistently endeavored in my official acts to avoid anything that would appear to be a reflection upon my predecessor, except where legal and administrative action seemed necessary.

As regards the letter of Mr. Pinchot above referred to, the illustrations which he sets forth as a demonstration of my unfriendly attitude toward the policy of conservation are easily refuted.

In the matter of his claim that there has been a failure of cooperation on the part of the General Land Office with the Forest Service in the efforts of the latter to secure full examination of the validity of the Cunningham coal claims and that there had been a refusal to grant the Forest Service access to the records of said claims in the General Land Office, a full and complete statement has been heretofore presented you by Mr. Schwartz, Chief of Field Service. If any such failure of cooperation existed, no complaint thereof has ever been made by the Agricultural Department to the responsible head of the Interior Department. Manifestly, ordinary proprieties would have required some such direct communication and that an opportunity be given to investigate and act thereon before a charge would be justified that I sympathized therewith and was responsible therefor.

The inference deducible from Mr. Pinchot's statement that the former Secretary considered the Cunningham claims fraudulent and recommended amendatory legislation is not justified by the facts. In the report of the former Secretary to Congress, of date April 20, 1908, recommending amendatory legislation, he in terms advised a confirmation of unlawful entries, as appeared in the proposed bill in the following language:

"Sec. 9. That any persons, associations, or corporations who have obtained prior to the passage of this act claim or title to any coal lands of the United States by alleged unlawful means shall, upon proof to the satisfaction of the Secretary of the Interior that the full coal-land price of such land as classified by said Secretary under authority of law has been paid to the United States, may have their patents confirmed for not to exceed two thousand five hundred and sixty acres of such coal lands, if patents have issued, or if patents have not issued shall receive patents for not to exceed said area. * * *"

This goes further than I ever suggested.

It has never been contended, so far as I am aware, that any actual, as distinguished from constructive, fraud was practiced by the Cunningham entrymen, the criticism of said claims being that the locators had through an unauthorized association or community of interest undertaken to secure patents to lands in excess of the legal limitation. Hence, had the recommendation of the former Secretary been adopted their patents could not have been withheld.

A reference to my annual report as Commissioner of the General Land Office of 1907 and the hearing before the Public Land Committee of the House, both of which have been reported by me to you, show the falsity of the statement that I was not in accord with legislation seeking to protect coal lands from monopolistic control.

There is grave danger in the furor that is being raised respecting the protection of the rights of the public in the public domain of doing injustice to persons who

initiated rights under existing laws, in the matter of securing a calm and dispassionate disposition of their rights, such as should be accorded all persons dealing with the Government; and the attacks made on public officers in connection with the administration of these affairs tend to cause them to act under such restraint of judgment as to frequently be guilty of injustice to the individuals dealt with, where there is any possibility of adverse criticism. The extreme solicitude for the general public is thereby often unjustly visited on the innocent entryman.

Mr. Pinchot's statement that a special decision of the present First Assistant Secretary, rendered on May 19, 1909, would have validated the Cunningham claims without regard to whether they were located in good faith or not is not true, and the lack of foundation therefor could have been readily ascertained by inquiry directed to the Attorney-General. Primarily, that decision had absolutely no reference whatever to the Cunningham claims. The parties interested therein had announced their unwillingness and absolute refusal to proceed under the act of 1908, and it was a construction of the latter act only which was attempted in the Pierce opinion, afterwards reviewed by the Attorney-General. The latter does not overrule, but, on the contrary, is in entire accord with the opinion of the First Assistant Secretary.

In the matter of my attitude toward withdrawals for so-called administrative sites, the facts are, that, responsive to a request for such withdrawal of lands outside of the Pike National Forest, in the State of Colorado, I called attention to the act of Congress providing "that no forest shall be created, nor any additions made to one heretofore created, within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by act of Congress," and determined that "a withdrawal as suggested would be, in effect, an extension of the forest reservation * * * and, consequently, in the face of the legislative prohibition."

Simultaneously, responsive to a request for withdrawal of an area 2 miles square (1,280 acres) within the Chelan Forest, Washington, attention was called to the legislative declaration that nothing in the act authorizing the setting apart of forest reservations should "prohibit any person from * * * prospecting, locating, and developing the mineral resources" of the lands included therein, and stated that a withdrawal as requested would have the effect of suspending the operation of the mineral-land laws of the lands affected thereby, and was therefore unauthorized. It was further suggested that if the lands proposed to be withdrawn were nonmineral in character, the jurisdiction of the Department of Agriculture was already complete. These requests for withdrawals simply stated that the lands were desired for "administrative sites," giving no declaration of necessity therefor. It was known to me, and admitted by forest officers, that some of the former withdrawals for administrative sites had been made for the sole purpose of controlling water-power sites and without any intention of using them for administrative purposes, and Secretary Wilson announced at a Cabinet meeting that further withdrawals for such purposes would not be requested. My action in reference to the two requests for withdrawals of administrative sites just referred to was based upon opinions transmitted to me by Assistant Attorney-General Lawler of the Interior Department; upon question being raised as to the soundness of said opinion the entire matter was referred to the Attorney-General, who will no doubt in due time give us the benefit of his views with reference thereto.

With reference to my letter to the Secretary of Agriculture that requests for withdrawals be accompanied by a showing of the necessity for the devotion of the lands to public use being a reflection upon the Secretary of Agriculture, it need only be stated that the relations between that official and myself are now, as they have always been, of the most cordial nature. I am satisfied that if he entertained any feeling that my communication had subjected him to an "indignity" he would have very properly called the same to my attention, and would have received a very prompt and complete disavowal of any such intention; that he has not done so is to me a complete demonstration that any such idea was as foreign to his own conception as it was to mine. As to the propriety of requiring such a showing, I believed that the same would be beneficial to both departments, there having been withdrawn under the mere designation "administrative sites" over 600,000 acres of the public lands, much of which is outside of forest reserves, and within those States where extension of reserves is prohibited by law. This has aroused serious criticism and charges to the effect that the practice of making such withdrawals was being indulged in for the purpose of circumventing the legislative prohibition. Manifestly, if a record were made showing the necessity for the use of the land specially withdrawn, an effective answer would plainly appear to such criticism and there would be less doubt as to the legal justification for the withdrawals.

In the matter of the withdrawals for water-power purposes made shortly prior to the 4th of March last and the restoration of the lands covered thereby shortly after that

date, the facts involved have been fully discussed above, responsive to a communication from Mr. Garfield, and also in my answer to you of the Glavis charges. That the policy of restoration has not been and was not reversed is self-evident and has been amply demonstrated.

Mr. Pinchot's statement that the so-called "Indian-Forest cooperative agreement" has never been passed upon by the comptroller is erroneous. On September 3, 1908, responsive to inquiry from the Interior Department, the comptroller wrote the following opinion:

"I have the honor to acknowledge the receipt of your letter of August 26, 1908, in which you request my decision of a question therein presented, as follows:

"Under a cooperative agreement existing between the Bureau of Forestry and the Office of Indian Affairs, affecting the cutting of timber and other matters pertaining to forestry on various Indian reservations, the expenses incurred in the prosecution of such work by the said bureau are paid by the Indian Office from funds belonging to the Indian tribes for whose benefit the work is performed.

"It is now deemed necessary by the Forester and the Commissioner of Indian Affairs to detail a clerk from the Forestry Bureau for duty in the Indian Office, in order that the work there may have the supervision of one who is thoroughly familiar with its technical details, his salary to be paid by a disbursing officer of this department from funds belonging to the Indians, and apportioned as far as possible among the different tribes in accordance with the amount of work performed for each.

"Before proceeding as indicated, I should like to have from you a decision as to whether or not there is any legal obstacle in the way of such an arrangement."

"The detail of an employee from one department to another, with or without an agreement between the heads of the departments concerned, to perform duties which are not connected with the department from which detailed and the payment of his salary from appropriations for, or moneys under the control of, the department to which detailed is unauthorized (14 Comp. Dec., 294), unless express authority by statute is granted therefor, and I am not aware of any statute that either expressly or impliedly gives general authority to make such details between the Agricultural and Interior departments.

"For the above reason your question is answered that there is legal objection to the proposed arrangement of which you speak."

The agreement referred to therein (which is the same agreement referred to by Forester Pinchot) provides, among other things, that "the Forest Service will undertake * * * the protection of all forests on Indian reservations * * * the salaries and expenses of all men actually employed to carry out this agreement shall be borne by the Indian Office * * * all men so employed * * * shall constitute a part of the force of the Forest Service responsible directly and only thereto * * * work in the woods * * * shall be planned, initiated, and conducted wholly by officers of the Forest Service."

The agreement therefore manifestly provided for the detail of employees of the Department of Agriculture to perform duties of the Indian Office not connected with the Forestry Bureau and the payment of the salaries and expenses of such employees out of moneys of the Interior Department, a practice to which the comptroller said there was legal objection and which he held to be unauthorized.

In the letter of Assistant Secretary Pierce to the Secretary of Agriculture, he said:

"This department, however, should be enabled to avail itself of the knowledge and skill of the officers of the Bureau of Forestry. To this end it is suggested that an arrangement be made with the Department of Agriculture whereby this department may request that it be loaned from time to time as the exigencies of the service may require and the business of the Forest Service permit, forestry experts to advise and aid the employees of the Indian Office in the proper care and disposition of timber upon Indian reservations, the expenses so incurred by the Forest Service to be reimbursed in the usual manner."

As to both these matters—the cooperative agreement and the withdrawal of administrative sites—I sought and received opinion as to the legal questions involved from the officer of the Government employed for that purpose. That official gave to them careful and studious consideration and announced his conclusions as the result thereof. While laying no claim to infallibility, I am convinced of the correctness of these views, and would have been recalcitrant to my trust had I announced any other determination than the one resulting from honest conviction.

The statement that the Reclamation Service had lost the support of the Secretary is without foundation, as is also the further statement that it is in danger of disintegration through any act of commission or omission on my part. The law lays upon the head of the Interior Department great responsibilities in its administration in reclamation matters. To say that efforts to become familiar with the operations of the service and

to intelligently carry out the duties incident to that administration will accomplish disintegration is entirely unwarranted and involves the assumption that the conduct of the reclamation officers can not stand scrutiny or supervision. As none of said officers have ever intimated any such idea to me, and it is unfair to assume that they are so regardless of their obligations to their responsible head as to secretly indulge in criticism to an officer who has no legal or other right to interfere in their affairs, it is reasonable to believe that the criticism made is based on idle gossip, to which no unprejudiced person, devoid of anxiety to condemn without a hearing, would have paid any heed.

Referring further to the Cunningham claims, I think it not improper to call attention to the fact that the forest reserve was extended over some of them long after the entries were made, and that in order to justify such an extension an expert was recently sent to Alaska by the name of Wingate, who reported that the lands were not coal lands. Recent reports from C. A. Fisher, a representative of the Geological Survey, and the report from Mr. Kennedy, sent to Alaska for that purpose by Mr. Glavia, show unquestionably that the lands are highly valuable for their coal deposits. Copies of these reports can be furnished you if desired.

I herewith attach copy of a report handed me by Mr. C. A. Fisher, of the Geological Survey, respecting his recent trip to Alaska regarding the Cunningham coal claims, marked "Exhibit C."

I also inclose a copy of a letter written by me April 8, 1908, to Hon. James R. Garfield, and his answer thereto of April 16, 1908, to further disprove the statement that I have been inimical to the protection of the coal lands in Alaska from monopolistic control. (Exhibit D.)

I also append hereto for your perusal copy of a letter recently written by my former partner, Hon. J. T. Ronald, now judge of the superior court of King County, Wash., to Dr. Lyman Abbott. (Exhibit E.)

Very respectfully,

R. A. BALLINGER, *Secretary.*

The PRESIDENT.

EXHIBIT A.

[Department of the Interior, office of the Secretary, General Land Office, file No. 2, §115.]

WATER-POWER SITES—RESTORATIONS.

MARCH 30, 1909.

The SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with power sites, the withdrawal of the following described lands, withdrawn under the supervisory power of the Secretary, February 17, 1909, no longer appears necessary to the interests of the United States.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

SALMON RIVER, IDAHO, BOISE MERIDIAN.

- T. 24 N., R. 1 E., all secs. 1 to 3, 10 to 15, and 22 to 24, inclusive.
- T. 25 N., R. 1 E., all secs. 1 to 5, 8 to 17, 20 to 29, and 32 to 36, inclusive.
- T. 26 N., R. 1 E., all secs. 1 to 3, 10 to 15, 22 to 28, and 33 to 36, inclusive.
- T. 27 N., R. 1 E., all secs. 2, 3, 10, 11, 13 to 15, 22 to 27, and 34 to 36, inclusive.
- T. 28 N., R. 1 E., all secs. 2 to 4, 9 to 11, 14 to 16, 21 to 23, 26 to 28, and 33 to 35, inclusive.
- T. 29 N., R. 1 E., all secs. 2 to 11, inclusive, 14, 15, 22, 23, 26, 27, 34, and 35.
- T. 30 N., R. 1 E., all secs. 28 to 33, inclusive.
- T. 23 N., R. 2 E., all secs. 1 to 4, inclusive (unsurveyed).
- T. 24 N., R. 2 E., all of township lying south of Salmon River (unsurveyed).
- T. 24 N., R. 3 E., all of township lying south of Salmon River (unsurveyed).
- T. 23 N., R. 3 E., all secs. 1 to 12, inclusive, lying south of Salmon River (unsurveyed).
- T. 24 N., R. 4 E., all of township lying south of Salmon River (unsurveyed).
- T. 24 N., R. 5 E., all secs. 1 to 12, inclusive, and sec. 18 lying south of Salmon River (unsurveyed).

T. 24 N., R. 6 E., all secs. 1 to 9, inclusive, lying south of Salmon River (unsurveyed).

T. 25 N., R. 6 E., all of township lying south of Salmon River (unsurveyed).

T. 16 N., R. 20 E., all secs. 1, 2, 11, 12, 13 to 16, 21 to 28, and 33 to 36, inclusive (unsurveyed).

T. 17 N., R. 20 E., all secs. 1 to 3, 10 to 15, 22 to 26, and 35 to 36, inclusive (unsurveyed).

T. 18 N., R. 20 E., all sec. 36 (unsurveyed).

T. 16 N., R. 21 E., all secs. 4 to 9, 16 to 21, and 28 to 33, inclusive (unsurveyed).

T. 17 N., R. 21 E., all secs. 3 to 9, 16 to 21, and 28 to 33, inclusive (unsurveyed).

T. 18 N., R. 21 E., all secs. 2 to 11, 15 to 22, and 27 to 34, inclusive (unsurveyed).

T. 19 N., R. 21 E., all secs. 1 to 4, 9 to 16, 20 to 29, and 32 to 35, inclusive (unsurveyed).

T. 20 N., R. 21 E., all secs. 1 to 3, 10 to 15, 22 to 27, and 34 to 36, inclusive (unsurveyed).

T. 23 N., R. 21 E., all secs. 1, 2, 3, and 12 lying north of Salmon River (unsurveyed).

T. 20 N., R. 22 E., all secs. 5, 6, 7, 8, 17, and 18.

T. 21 N., R. 22 E., all secs. 4 to 9, 16 to 21, and 28 to 33, inclusive.

T. 22 N., R. 22 E., all secs. 4 to 9, 16 to 21, and 28 to 33, inclusive.

T. 23 N., R. 22 E., all secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32.

T. 30 N., R. 1 W., all secs. 2 to 11, inclusive, 14 to 16, 22 to 27, and 34 to 36, inclusive (partly unsurveyed).

T. 30 N., R. 2 W., all secs. 1, 2, 3, 10, 11, and 12 (unsurveyed).

T. 31 N., R. 2 W., all secs. 7, 8, 9, 16 to 21, and 26 to 35, inclusive (partly unsurveyed).

T. 29 N., R. 3 W., all secs. 4 to 9, and 16 to 18, inclusive (unsurveyed).

T. 30 N., R. 3 W., all secs. 4 to 9, 16 to 21, and 28 to 33, inclusive (unsurveyed).

T. 31 N., R. 3 W., all secs. 10 to 15, and 19 to 36, inclusive (unsurveyed).

T. 29 N., R. 4 W., all fractional township (unsurveyed) east of Snake River.

T. 30 N., R. 4 W., all secs. 11 to 14, 23 to 26, inclusive, and 35 to 36 (unsurveyed).

Very respectfully,

A. P. DAVIS, *Acting Director*.

Approved March 30, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary*.

DEPARTMENT OF THE INTERIOR,
Washington, April 1, 1909.

SIR: It appears from orders heretofore issued, dated, respectively, January 7, 18, and February 27, 1909, that approximately 677,000 acres of public lands were withdrawn from all forms of entry, with a view to the conservation of water resources, in the States of Montana, Utah, and Oregon.

You will please report to me the reasons, if any there are, whether statutory or otherwise, why these lands should not be restored to entry under the public-land laws.

Very respectfully,

R. A. BALLINGER, *Secretary*.

HON. F. H. NEWELL,
Director United States Reclamation Service.

APRIL 7, 1909.

The SECRETARY OF THE INTERIOR.
(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Swan River, Montana, the withdrawal of the following-described lands, withdrawn under the supervisory authority of the Secretary of the Interior under date of February 18, 1909, no longer appears necessary to the interests of the United States.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated, and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

SWAN RIVER, MONTANA, MONTANA PRINCIPAL MERIDIAN.

T. 26 N., R. 18 W., all secs. 6, 7, 18, 19, and 20.

T. 26 N., R. 19 W., all secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 23, and 24.

T. 27 N., R. 19 W., all secs. 15, 16, 21, 22, 23, 26, 27, 28, and 31 to 36, inclusive.

As this withdrawal has been of such short duration, and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

— — — — —, *Acting Director.*

Approved April 7, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

APRIL 7, 1909.

The SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Missouri River, Montana, the withdrawal of the following-described lands, withdrawn under the supervisory authority of the Secretary of the Interior under date of January 18, 1909, no longer appears necessary to the interests of the United States.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

MONTANA, MISSOURI RIVER, MONTANA PRINCIPAL MERIDIAN.

T. 6 N., R. 1 E., all sec. 1.

T. 7 N., R. 1 E., all secs. 1, 2, 11 to 14, 23 to 26, inclusive, 35, and 36.

T. 8 N., R. 1 E., all secs. 1, 2, 11 to 14, 23 to 26, inclusive, 35, and 36.

T. 9 N., R. 1 E., all secs. 4 to 10, inclusive, 13 to 17, inclusive, 22 to 27, inclusive, 35, and 36.

T. 10 N., R. 1 E., all secs. 29 to 32, inclusive.

T. 18 N., R. 1 E., all secs. 2 to 5, 8, 9, 10, 15 to 20, inclusive, 29, and 30.

T. 19 N., R. 1 E., all secs. 13, 23 to 27 and 34 to 36, inclusive.

T. 2 N., R. 2 E., all secs. 3 to 10 and 15 to 36, inclusive.

T. 3 N., R. 2 E., all secs. 1, 2, 11 to 15, 22 to 27, inclusive, 34, and 35.

T. 4 N., R. 2 E., all secs. 1, 2, 11 to 14, 23 to 26, inclusive, 35, and 36.

T. 5 N., R. 2 E., all secs. 3, 4, 9, 10, 14, 15, 16, 22, 23, 24, 25, 26, 35, and 36.

T. 6 N., R. 2 E., all secs. 6, 7, 8, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 32, 33, and 34.

T. 7 N., R. 2 E., all secs. 6, 7, 18, 19, 30, and 31.

T. 8 N., R. 2 E., all secs. 30 and 31.

T. 19 N., R. 2 E., all secs. 1 to 20, inclusive, and 29 to 31, inclusive.

T. 3 N., R. 3 E., all secs. 6, 7, 18, and 19.

T. 4 N., R. 3 E., all secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32 (partly unsurveyed).

T. 5 N., R. 3 E., all sec. 31 (unsurveyed).

T. 19 N., R. 3 E., all secs. 1 to 18, inclusive, and 21 to 24, inclusive.

T. 20 N., R. 3 E., all secs. 1 to 3, 10 to 15, 22 to 27, and 31 to 36, inclusive.

T. 19 N., R. 4 E., all secs. 6 and 7.

T. 20 N., R. 4 E., all sec. 31.

T. 10 N., R. 1 W., all secs. 2 to 6, 10, 11, 13, 14, 15, 22 to 27, and 34 to 36, inclusive.

T. 11 N., R. 1 W., all secs. 30, 31, and 32.

T. 17 N., R. 1 W., all secs. 1, 2, 3, 8 to 12, inclusive, 16 to 21 and 29 to 31, inclusive.

T. 18 N., R. 1 W., all secs. 23, 24, 25, 26, 35, and 36.

T. 10 N., R. 2 W., all sec. 1.

T. 11 N., R. 2 W., all secs. 4, 5, 8 to 17, 23 to 26, inclusive, 35, and 36.

T. 12 N., R. 2 W., all sec. 31, all secs. 19, 30, and 32 west of Missouri River (unsurveyed).

T. 13 N., R. 2 W., all secs. 6 and 7 and 19, 30, and 31 west of Missouri River (unsurveyed).

T. 16 N., R. 2 W., all secs. 1, 2, 3, 9, 10, 11, 14 to 22, inclusive, 28, 29, and 30 (partly unsurveyed).

T. 17 N., R. 2 W., all secs. 25 and 26 and 35 and 36.

T. 12 N., R. 3 W., all secs. 13 and 14 west of Missouri River and all secs. 2, 3, 10, and 11.

T. 13 N., R. 3 W., all secs. 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36.

T. 14 N., R. 3 W., all secs. 3, 4, 5, 8, 9, 10, 11, 13, 14, 15, 16, 22, 23, 26, 27, 34, and 35.

T. 15 N., R. 3 W., all secs. 2, 3, 10, 11, 13 to 17, 20 to 22, inclusive, 27, 28, 29, 32, 33, and 34.

T. 16 N., R. 3 W., all secs. 22, 23, 24, 25, 26, 27, 34, 35, and 36.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved April 7, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

APRIL 7, 1909.

The honorable the SECRETARY OF THE INTERIOR
(Through the Commissioner of the General Land Office).

✓ **SUB:** From recent investigations in connection with the Flathead River, Montana, the withdrawal of the following-described lands, withdrawn under the supervisory authority of the Secretary of the Interior, under date of February 16, 1909, no longer appears necessary to the interests of the United States.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain:

FLATHEAD RIVER, MONTANA, MONTANA PRINCIPAL MERIDIAN.

T. 30 N., R. 19 W., all secs. 5 and 6 lying north of Flathead River.

T. 31 N., R. 19 W., all secs. 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32 lying west of Flathead River.

T. 26 N., R. 20 W., all secs. 1, 2, 3, 4, and 5.

T. 27 N., R. 20 W., all secs. 3, 4, 5, 9, 10, 11, 14, 15, 16, 21, 22, 23, 25, 26, 27, 28, 33, 34, 35, and 36.

T. 28 N., R. 20 W., all secs. 19 to 22 and 27 to 34, inclusive.

T. 29 N., R. 20 W., all secs. 6, 7, 18, 19, 30, and 31.

T. 30 N., R. 20 W., all secs. 1, 2, 3, 4, 9, 10, 11, 15 to 21, inclusive, 30, 31, and 32.

T. 31 N., R. 20 W., all secs. 12 and 13.

T. 28 N., R. 21 W., all secs. 1, 2, 3, 4, 9, 10, 11, 15, 16, 21 to 28 and 33 to 36, inclusive.

T. 29 N., R. 21 W., all secs. 1, 12, 13, 24, 25, and 36.

T. 30 N., R. 21 W., all secs. 13, 24, 25, and 36.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved April 10, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

APRIL 8, 1909.

The SECRETARY OF THE INTERIOR
(Through the Commissioner of the General Land Office).

SUB: From recent investigations in connection with the Owyhee River, Oregon, the withdrawal of the following-described lands, withdrawn under the supervisory authority of the Secretary of the Interior, under date of January 18, 1909, no longer appears necessary to the interests of the United States.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated, and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

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OREGON, OWYHEE RIVER, WILLAMETTE PRINCIPAL MERIDIAN.

T. 27 S., R. 41 E., all secs. 23, 24, 25, 26, 35, and 36.
 T. 28 S., R. 41 E., all secs. 1, 2, 3, 10 to 17, 20 to 24, 27 to 29, and 32 to 34, inclusive.
 T. 29 S., R. 41 E., all secs. 4, 5, 8, 9, 16, 17, 20, 21, and 28 to 33, inclusive.
 T. 30 S., R. 41 E., all secs. 4, 5, 6, 7, 8, 9, 16 to 21, 28 to 33, inclusive.
 T. 31 S., R. 41 E., all.
 T. 27 S., R. 42 E., all secs. 19 to 36, inclusive.
 T. 31 S., R. 42 E., all secs. 4 to 9, 16 to 21, and 28 to 33, inclusive.
 T. 32 S., R. 42 E., all (unsurveyed).
 T. 33 S., R. 42 E., all secs. 1, 2, 3, 10 to 15, inclusive (unsurveyed).
 T. 26 S., R. 43 E., all secs. 3, 4, 5, 8 to 17, 19 to 24, and 28 to 33, inclusive.
 T. 27 S., R. 43 E., all secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32 (unsurveyed).
 T. 32 S., R. 43 E., all secs. 29 to 32, inclusive (unsurveyed).
 T. 33 S., R. 43 E., all (unsurveyed).
 T. 23 S., R. 44 E., all secs. 1, 2, 3, 10 to 15, 22 to 27, and 34 to 36, inclusive (unsurveyed).
 T. 24 S., R. 44 E., all (unsurveyed).
 T. 25 S., R. 44 E., all secs. 2, 3, 4, 9, 10, 11, 14, 15, 16, 21, 22, 23, 26, 27, 28, 33, 34, and 35 (unsurveyed).
 T. 26 S., R. 44 E., all secs. 3, 4, 9, 10, and 15 to 18, inclusive.
 T. 33 S., R. 44 E., all secs. 19 to 36, inclusive (unsurveyed).
 T. 34 S., R. 44 E., all secs. 1 to 12, inclusive (unsurveyed).
 T. 21 S., R. 45 E., all secs. 1, 2, 3, 10 to 15, and 19 to 36, inclusive (unsurveyed).
 T. 22 S., R. 45 E., all (unsurveyed).
 T. 23 S., R. 45 E., all secs. 4 to 9, 16 to 21, 28 to 33, inclusive (unsurveyed).
 T. 33 S., R. 45 E., all secs. 19, 20, 21, and 28 to 33, inclusive (unsurveyed).
 T. 34 S., R. 45 E., all (unsurveyed).
 T. 35 S., R. 45 E., all.
 T. 20 S., R. 46 E., all secs. 25 to 36, inclusive.
 T. 21 S., R. 46 E., all secs. 1 to 12, inclusive, and sec. 18.
 T. 35 S., R. 46 E., all.
 T. 20 S., R. 47 E., all secs. 30 and 31.
 T. 21 S., R. 47 E., all secs. 6 and 7.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS, *Acting Director*.

Approved April 10, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary*.

APRIL 7, 1909.

The SECRETARY OF THE INTERIOR

(Through the Commissioner of the General Land Office).

SIR: From recent investigations in connection with the Missouri River, Montana, the withdrawal of the following-described lands, withdrawn under the supervisory authority of the Secretary of the Interior, under date of February 16, 1909, no longer appears necessary to the interests of the United States.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

MISSOURI RIVER, MONTANA, MONTANA PRINCIPAL MERIDIAN.

[Jefferson, Madison, Gallatin, and Riverhead rivers.]

T. 1 N., R. 1 E., all secs. 4, 5, 6, 7, 8, 9, 17, 18.
 T. 2 N., R. 1 E., all secs. 13, 14, 22 to 29, inclusive, 32, 33, 34.
 T. 3 S., R. 1 E., all secs. 2, 3, 4, 9, 10, 11, 15, 16, 21, 22, 27, 28, 33, 34.
 T. 4 S., R. 1 E., all secs. 4, 5, 8, and 9 not included within Madison National Forest, all secs. 17, 18, 19, 20, 30, and 31.
 T. 8 S., R. 1 E., all secs. 19, 30, and 31.
 T. 9 S., R. 1 E., all secs. 6, 7, 18, 19, 30, 31.
 T. 10 S., R. 1 E., all secs. 5, 6, 7, 8, 16, 17, 18, 20, 21, 27, 28, 29, 33, and 34.

- T. 1 N., R. 2 E., all secs. 4 to 9, 16 to 21, and 28 to 33, inclusive.
 T. 1 S., R. 2 E., all secs. 5, 8, 17, 20, 29, and 32.
 T. 2 S., R. 2 E., all secs. 5, 8, 17, 20, and 29.
 T. 2 N., R. 3 E., all secs. 25 to 36, inclusive.
 T. 1 N., R. 1 W., all secs. 19, 30, and 31.
 T. 4 S., R. 1 W., all secs. 25, 26, 35, and 36.
 T. 5 S., R. 1 W., all secs. 1, 2, 3, 10, 11, 12, 14, 15, 22, 23, 27, 28, 33, and 34.
 T. 6 S., R. 1 W., all secs. 3, 4, 8, 9, 10, 15, 16, 17, 20, 21, 22, 28 to 33, inclusive.
 T. 7 S., R. 1 W., all secs. 4 to 9, 16 to 21, 27 to 29, and 32 to 35, inclusive.
 T. 8 S., R. 1 W., all secs. 2, 3, 4, 9 to 15, inclusive, 22, 23, 24, 25, 26, 35, and 36.
 T. 1 N., R. 2 W., all secs. 6, 7, 8, 14 to 26, inclusive, and 35 and 36.
 T. 1 N., R. 3 W., all secs. 1 to 13, inclusive, 18 and 24.
 T. 2 N., R. 3 W., all secs. 31 to 36, inclusive.
 T. 1 N., R. 4 W., all secs. 1, 2, 9 to 17, inclusive, 20, 21, 28, 29, 32, and 33.
 T. 2 N., R. 4 W., all secs. 35 and 36.
 T. 1 S., R. 4 W., all secs. 5, 6, 7, 8, and 18.
 T. 14 S., R. 4 W., all secs. 1 to 12, inclusive.
 T. 1 S., R. 5 W., all secs. 1, 10 to 16, inclusive, 21, 22, 23, and 27 to 34, inclusive.
 T. 2 S., R. 5 W., all secs. 5, 6, 7, and 18.
 T. 14 S., R. 5 W., all secs. 1 to 12, inclusive.
 T. 1 S., R. 6 W., all sec. 36.
 T. 2 S., R. 6 W., all secs. 1, 2, 11, 12, 13, 14, 15, 22 to 27, and 33 to 36, inclusive.
 T. 3 S., R. 6 W., all secs. 2, 3, 4, 9, 10, 15, 16, 20, 21, 22, and 27 to 34, inclusive.
 T. 4 S., R. 6 W., all secs. 3, 4, 5, 6, 8, 9, 10, 13 to 17, 20 to 26, inclusive, 29, 30, 31, 32, 35, and 36.
 T. 5 S., R. 6 W., all sec. 6.
 T. 13 S., R. 6 W., all secs. 31, 32, and 33.
 T. 14 S., R. 6 W., all secs. 1 to 6 and 8 to 16, inclusive.
 T. 4 S., R. 7 W., all sec. 36.
 T. 5 S., R. 7 W., all secs. 1, 2, 10 to 15, 19 to 23, and 27 to 32, inclusive.
 T. 13 S., R. 7 W., all secs. 31 to 36, inclusive.
 T. 14 S., R. 7 W., all secs. 1 to 6, inclusive.
 T. 5 S., R. 8 W., all secs. 25 and 36.
 T. 6 S., R. 8 W., all secs. 1, 2, 10, 11, 12, 14, 15, 21, 22, 23, 27, 28, 32, 33, and 34.
 T. 7 S., R. 8 W., all secs. 4 to 9, inclusive, 17, 18, 19, and 30.
 T. 13 S., R. 8 W., all secs. 19, and 28 to 36, inclusive.
 T. 14 S., R. 8 W., all secs. 1, 2, 3, and 4.
 T. 7 S., R. 9 W., all secs. 13, 23 to 27, inclusive, 34, 35, and 36.
 T. 8 S., R. 9 W., all secs. 2, 3, 4, 8, 9, 10, 15 to 21, and 29 to 32, inclusive.
 T. 11 S., R. 9 W., all sec. 31.
 T. 12 S., R. 9 W., all secs. 6, 7, 8, 16, 17, 18, 20, 21, 27, 28, 29, 33, and 34.
 T. 13 S., R. 9 W., all secs. 3, 4, 9, 10, 11, 13, 14, 15, 16, 22 to 25, inclusive.
 T. 8 S., R. 10 W., all secs. 24, 25, 26, 35, and 36.
 T. 9 S., R. 10 W., all secs. 1, 2, 3, 9, 10, 11, 12, 14, 15, 16, 20, 21, 22, 27, 28, 29, 33, and 34.
 T. 10 S., R. 10 W., all secs. 5, 6, 7, 8, 16, 17, 18, 20, 21, 22, 27, 28, 29, 33, and 34.
 T. 11 S., R. 10 W., all secs. 2, 3, 4, 9, 10, 11, 14, 15, 22, 23, 24, 25, 26, 35, and 36.
 T. 12 S., R. 10 W., all sec. 1.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved April 10, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

DEPARTMENT OF THE INTERIOR,
 UNITED STATES RECLAMATION SERVICE,
 Washington, D. C., April 10, 1909.

The SECRETARY OF THE INTERIOR.

SIR: I am in receipt of your letter of April 1, giving instructions to report the reasons, if there are any, why certain lands in the States of Montana, Utah, and Oregon should not be restored to entry under the public-land laws.

The area of 677,000 acres mentioned in your letter is probably the total area of the townships and sections named in the various lists. A large portion of each of these

townships has already passed out of the control of the United States, and the withdrawal would not affect lands where title had already been initiated.

In making these withdrawals it is understood to have been the policy to make examinations as early as possible, with the purpose of restoring the major portion of the lands, after reserving areas which include natural falls, dam sites, or other natural opportunities for the cheap development of power.

These lands were withdrawn by order of Secretary Garfield in accordance with a policy adopted by the Cabinet of President Roosevelt, for the purpose of checking the acquisition of valuable power sites in the mountain regions of the West by syndicates, which were believed to be attempting to monopolize all the available power possibilities in certain regions.

That such attempts at power monopoly are being actively and extensively made seems to be well established, but whether it can be prevented or materially checked by executive action under present laws is a question involving points of law and of administrative policy upon which this office is not competent to advise.

Very respectfully,

A. P. DAVIS, *Acting Director.*

EXHIBIT B.

(Exhibit B is a topographical map of the State of Oregon.)

EXHIBIT C.

NOVEMBER 11, 1909.

The honorable the SECRETARY OF THE INTERIOR.

SIR: On October 5 I arrived at Seattle, en route to Katalla, Alaska, for the purpose of making an examination of the Cunningham group of coal claims. Before leaving Washington I was instructed by Mr. H. H. Schwartz, of the General Land Office, to call on Mr. J. M. Sheridan, special agent, located at Seattle, and obtain a copy of a previous report made by a local expert on the Cunningham property; also the original land-office plats of the individual claims.

A short time after my arrival in Seattle I called at the Federal Building, and on the stairway of the second floor met a man of whom I inquired as to the location of Mr. Sheridan's office. I was informed by this gentleman, who introduced himself as Mr. Glavis, that Mr. Sheridan was out of the city, but that he was chief of the division, and could therefore probably answer any inquiries. I therefore made my business known while returning with Mr. Glavis to his office. Mr. Glavis assured me that a copy of the desired report would be furnished me on the following day, but that he knew nothing as to the whereabouts of the much-needed land-office plats. Neither did he manifest any interest in assisting me to locate them. Failing to secure any information concerning these land-office plats of the individual claims from Mr. Glavis, I appealed to Mr. Frank A. Twitchell, the register of the local office, who promptly wired to Mr. Schwartz and succeeded in locating the desired maps in the registered letter department of the post-office.

I also made inquiry of Mr. Glavis as to the address of certain parties in Seattle to whom I had been referred by Mr. Schwartz as probably being able to supply me with information concerning the Cunningham claims. Mr. Glavis informed me that he did not believe these gentlemen would furnish me any information which could be relied upon, giving as his reason that he regarded them as "crooks."

In our short conversation at Mr. Glavis's desk I was told that it was useless for me to proceed to Alaska for the purpose of examining the Cunningham claims, as the conditions in the field were well known, and that in his opinion it was an unnecessary expenditure of public funds. To this statement I promptly replied that I was not at liberty to discuss the question, that I had my instructions, and that I should proceed on the first boat, as soon as the desired maps were obtained.

In my original instructions from Mr. John McPhaul, Acting Assistant Commissioner of the General Land Office, I was directed to proceed to Katalla, Alaska, for the purpose of making an examination of the Cunningham group of coal claims and to there put myself in communication with Messrs. Kennedy and Wingate, coal experts for the General Land Office and the Forest Service, respectively, who had previously examined the field but had failed to agree as to the coal or noncoal character of the land, and to arrange if possible, by joint examination on the grounds, some agreement between these two men. If, however, it was impossible to get into communication with them, I was to proceed alone to the field and make an examination sufficiently

detailed so as to be able to adjust any differences which might exist between the two previous workers.

On my arrival at Katalla I learned that these two gentlemen had completed their investigations and were at that time returning to Seattle. I therefore proceeded to the field with a party of ten men, prepared for a detailed investigation, which was accomplished in twenty-six days. During this time coal beds were opened, measured, and accurately located at over 200 different places within the limits of the Cunningham property, representing what is believed to be 28 distinct beds, aggregating 189 feet of coal.

When I reached the Cunningham claims I found that the property was being examined by a Mr. Winchell, a well known geologist of the University of Wisconsin, and Mr. Green, a mining engineer from Cincinnati, who were reported to be making the examination in the interests of James J. Hill. These two gentlemen had been on the ground about ten days when I arrived and were apparently making a careful examination of the district. It was also reported that H. V. Winchell (brother of the above), and formerly geologist for the Great Northern Railway, had recently been on the ground.

Failing to make connections with Messrs. Kennedy and Wingate, who had preceded me in the investigation, I naturally made inquiry of Mr. McGrath, the Cunningham representative on the ground, as to how detailed the investigations of these two men had been. I was informed that Mr. Kennedy had covered in a very thorough way the entire property, but that the examination made by Mr. Wingate only lasted a few days and was of a very superficial character. In fact, according to Mr. McGrath, who is very familiar with the field and who accompanied Mr. Wingate, the latter did not take the trouble to examine all the localities where prospects had already been made on the claims. At one locality on Lyons Creek, in the Lucky Baldwin claim, I was shown a coal prospect exhibiting a bed about 3 feet thick, which I located, measured, and recorded in my notes. After my record had been made Mr. McGrath informed me that Mr. Wingate had visited this individual prospect and had not regarded the bed as of workable dimension. In fact, using Mr. McGrath's version of Wingate's, he said that "if you can show me nothing better than this, let's return to the cabin." This particular bed showed an excellent quality of coal, comparable in every way with some of the best coal seen in the district.

On my return to Seattle on October 28, I found that reports on the Cunningham property had been submitted to Mr. J. M. Sheridan by both Messrs. Kennedy and Wingate. I proceeded to prepare my own report, which consisted of 58 typewritten pages, accompanied by 33 topographic and coal maps, covering each individual claim, and submitted the same on October 31. After my report had been submitted to Mr. Sheridan I was shown the reports above mentioned. The one by Mr. Kennedy, although very much less in detail, was practically in accord with my own, while that of Mr. Wingate was entirely at variance with my findings. An unfavorable report of this character was certainly not expected by the writer, on an area where previous survey work, with which Mr. Wingate should be familiar, had established the value of the coals, especially when the report was based on an examination so cursory as that of Mr. Wingate. He dismissed the properties by stating that the coal beds consisted of carbonaceous shale with thin streaks of coal, also made a few unfavorable comments on the methods employed to develop the deposits. In fact, the entire report, 24 pages in length, consisted in condemning the district as a coal proposition.

After having examined all parts of this field in considerable detail, locating what is believed to be 28 distinct coal beds, having an aggregate thickness of 189 feet of coal, and prospected these beds sufficiently to obtain their thickness in over 200 different localities within an area of less than 10 square miles, it is needless to say that this report, in the judgment of the writer, is, to say the least, absurd. It is inconceivable how anyone examining this district in good faith, whether he be expert engineer or observant layman, and even if his examination should extend over no more than three days' time, could fail to be convinced of the coal character of these claims, the extent of the beds, and the obvious value of the coal deposits. In this opinion I am sustained by all the survey geologists familiar with the coal conditions in this particular field.

Very respectfully,

C. A. FISHER, *Geologist.*

EXHIBIT D.

APRIL 8, 1908.

HON. JAMES RUDOLPH GARFIELD,
Secretary of the Interior, Washington, D. C.

MY DEAR JIM: Since returning to Seattle numerous persons interested in coal lands in Alaska have been to me from time to time regarding pending legislation and the possibility of an adjustment of the difficulties in the way of securing their patents. Many of these people are among our best and most influential citizens, and honest in their endeavors to secure and develop coal properties and are ready to proceed to open up coal mines independent of monopolistic control. I recognize that some of the locators in Alaska coal fields are not acting in good faith, but are merely seeking to get a speculative advantage. As you well know, I have no personal interest in the opening of these fields beyond the general advantage that will result to this coast and the country at large. You will recall my conversation with you respecting legislation for Alaska and the bill introduced by Delegate Cale; that I considered the passage of the Cale bill an opening wedge to general legislation applicable to the States, and which would conserve the coal deposits as a public utility and prevent a monopolization thereof. I do not know what, if any, modification or amendments have been made in this bill, but as heretofore drafted it would reach these results, which, as I conceive, cover the full extent to which the Government is interested. I consulted you respecting all connection, either official or unofficial, I had respecting this bill. I understood from the President that he was in full accord with such legislation. I was also led to believe from the conversations between us that you had no opposition to the Cale bill further than your frequently expressed opinion in favor of a leasing system. I also relied somewhat on the President's position as stated in his last message, wherein he recommended the adoption of new coal-land legislation, either by way of a leasing system or a sale of deposits with proper limitations. You will also recall the fact that I modified my annual report to accord with the recommendation of the President in his message, so that I inferred that a sale system, if agreeable to Congress, would not be opposed by the administration. My view is that it is of considerable importance to secure at this session of Congress the passage of a measure that will enable existing bona fide locators to come under a law that will impose governmental control for the development of these rich deposits of coal and permit the public to have the benefit of an early supply therefrom, and the Government is specially interested in such supplies for naval uses. Several capitalists now investing large sums in copper mines and railroad development near Katalla are anxious to secure a monopolization of the Kyak coal lands. I believe they will attempt to secure the most available properties as soon as patented under the present law, and thus freeze out or impede independent development of these deposits; therefore, inasmuch as in many cases no legal excuse will probably prevent the issuance of patents on the majority of existing locations under the present law, it seems to me wise to try to bring these lands under the control of the department through a form of disposition similar to the Cale bill. The reports here are to the effect that you are radically opposed to this bill and that I was acting in opposition to your wishes in having anything to do with the same. I feel somewhat embarrassed respecting such reports and can not believe that they are true, as it was far from my intention to be connected, either directly or indirectly, with a matter of this kind that would not meet with your full approval. My purpose in writing you is, first, that you may fully understand my position, as I value your friendship and my obligations to you too great to permit the possibility of a misunderstanding, and I feel some personal responsibility in connection with the encouragement of the Cale bill. Second, I feel it my duty to apprise you of my belief in the necessity for congressional action on this subject at this session of Congress, if it can be had. I have been importuned by a great number of people representing interests in Alaska, who are living in Seattle, Portland, and Tacoma, to go to Washington and take this matter up with you, the President, and Members of Congress, but have refused to consider such request, as I have contented myself with the knowledge that you are anxious to do what is for the best interest of the public in the disposition of this question. I am confident, however, that it will be unfortunate to let this session pass, as I have before stated, without getting some remedial legislation relating to coal lands in Alaska. All those I have talked with here who are interested in Alaska coal fields are willing to accept the Cale bill as a solution of the present difficulties and to transfer their interests thereunder, and they also believe it a proper measure for future control of coal lands in Alaska. Those who are intimately acquainted with conditions in Alaska realize the difficulties and enormous expense of development of these properties, and some consideration should be given to this condition, resulting in more liberal treatment than is applied to deposits in the States and other Territories.

Just before leaving Washington, in bidding good-bye to the President, I spoke to him in reference to the Cale bill and the fact that I had been before the committee and presented my view of the necessities for such legislation, and he commended my action in connection with this matter.

I do not wish you to think that I have any pride of opinion respecting this character of legislation. I do not wish, however, to be put in a false position, and I have at some length endeavored to explain to you the entire situation as I recall it.

I hope I have been misinformed as to your disposition respecting the proposed legislation. I would be pleased to have the President acquainted with the substance of this letter.

Yours, very sincerely,

R. A. BALLINGER.

SECRETARY'S OFFICE,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 16, 1908.

MY DEAR DICK: I have your personal letters of recent date. Mr. Ryan has been in with a number of other Alaskan men, and I hope the coal matter will be straightened out. I am sending a report to the committee to-day on the subject. Both bills will probably be put into one, a substantial agreement having been reached with Mr. Mondell.

Mr. Milroy has not appeared. It is too bad we can't get hold of the men we want for Alaska, and yet I don't wonder at the unwillingness of the right sort of men to go to that country.

Don't be disturbed about your position on the coal bill. I thoroughly understood it, and there has been no reason for any misunderstanding. Curiously enough, I had a talk with Clark of the Post-Intelligencer the day I received your letter, and took occasion to tell him that there was no misunderstanding. I will have a copy of the Mondell bill as finally reported by the committee sent you as soon as it is out.

Please give my best regards to Mrs. Ballinger.

Very sincerely, yours,

JAMES RUDOLPH GARFIELD.

Mr. RICHARD A. BALLINGER,
Alaska Building, Seattle, Wash.

EXHIBIT E.

SUPERIOR COURT OF THE STATE OF WASHINGTON,
FOR THE COUNTY OF KING,
Judges Chambers, Seattle, October 25, 1909.

Dr. LYMAN ABBOTT,
Editor in Chief, the Outlook, New York City.

MY DEAR SIR: From a creditable source I have information that one of the magazines published in New York has already set up in form a report to the effect that Secretary of the Interior Ballinger was formerly attorney for Clark Davis and associates, claimants of coal interests in Alaska, which is to be published by the magazine in question presumably for the purpose of impeaching his qualifications to deal as the head of the department with such questions.

Of late so much has been said in the public prints concerning Judge Ballinger's legal connections with interests in Alaska coal-land locations that, lest such may be so construed as to discredit his standing in dealing with such matters, I, though of an opposite political faith, yet, as one of his former law partners, we having spent twelve years of our lives together in the most intimate and confidential relations, only severed by his elevation to the Cabinet and my promotion to the bench, and feeling myself qualified, by reason of my knowledge of the facts, ask permission through you to place before the public a full and true history of Judge Ballinger's connection with such matters.

Touching his relation to the Cunningham claims, the President, himself a great jurist and weigher of testimony, has pronounced judgment, and, as you say in the October number of the Outlook, "His judgment * * * will be accepted as final and satisfactory by the country," I shall therefore make no reference thereto further than to suggest that your conclusion in the article referred to, characterizing as "bad taste" his acceptance of a fee from the Cunningham claimants after their cause had been investigated by his own office while Commissioner of the General Land Office, and which at the time of such fee "still rested under the charge of being fraudulent," seems to me as not resting for support upon correct premises. I take it this

inference thus expressed is based upon an assumed accuracy of certain of the allegations contained in your general statement or summary of the charges set forth in a preceding part of the article as having been made against the Secretary—one of which allegations is to the effect that Special Agent Jones, while Judge Ballinger was commissioner, "submitted a report in which it was intimated that the entries (meaning Cunningham entries) were fraudulent;" and another of which allegations is to the effect that Judge Ballinger's order while commissioner "that these claims be 'clear listed' for patent was suspended as the result of a protest from Mr. Glavis;" and another of which allegations is to the effect that Judge Ballinger, after his resignation as commissioner, with full knowledge of the alleged fraudulent character of these claims, urged before the House Committee on Public Lands "legislation which would have benefited the Cunningham claimants."

(At this point there is attached a typewritten slip, as follows:)

In connection with this sheet, No. 2, of Judge Ronald's letter in blue pencil, Judge Ronald writes me, under date of October 25, as follows:

"You will notice that my comments concerning certain allegations with reference to the Cunningham claims are based entirely upon certain marginal notes which I found in your handwriting in the edition of the Outlook which Mrs. Ballinger furnished me. For instance, in the Outlook's statement, that Special Agent Jones had made a report concerning these claims, you have put in the margin 'not these claims,' and again, where the Outlook states that they were protested by Glavis, you have commented with the word 'No;' and again, where the Outlook states that you urged before the House committee certain legislation, you have commented 'No.'"

(The part in blue brackets begins "I take it this inference," etc., and ends "legislation which would have benefited the Cunningham claimants.")

Assuming, as I have before written, the truth of the three allegations above stated, your inference of "bad taste" would, I concede, be logical. If all of these premises, however, are untrue, then, I submit, his employment can not be criticised. Knowing the man as I know him, knowing his high ideals as a practitioner and his high regard for the proprieties and ethics of his profession, I, without having seen the record, have no hesitancy in asserting that the report of Special Agent Jones was not with reference to the Cunningham claims; that no order of Judge Ballinger's while commissioner clear listing the Cunningham claims was held up as a result of a protest from Mr. Glavis; and that Judge Ballinger at no time urged before the House Committee on Public Lands legislation in the interest of any claimant which he had any reason to suspect as being fraudulent. Is it reasonable that a man of his exalted ideas would for the paltry fee of \$250 place himself in such a position? If the records show such to be the case, is it possible that the inference of bad taste naturally deducible therefrom could have escaped the great legal mind of the President in his examination?

Touching, however, the report previously referred to, concerning Judge Ballinger's legal connection with the Clark Davis coal-land claims, I suppose this designation refers to a corporation known here as the Alaska Petroleum and Coal Company, of which Mr. T. S. Lippy, of this city, is president, and Clark Davis general manager. That company has been represented by regular counsel for a number of years past, and, as far as I know, since its organization. At no time did this company or any of its officers in any manner discuss its business or consult with any member of our firm. Not one of us ever knew a single fact concerning its business or of the scene of its operations further than the general understanding that it was developing coal and oil properties somewhere in Alaska. I can imagine but one circumstance from which even a suspicion of Judge Ballinger's connection with this corporation could arise. In May, 1906, one John W. Hartline, acting for himself and some six or seven others, including his relatives, locators of coal mines near Katalla, Alaska, entered into a written contract with a young man, H. R. Harriman by name, who was acting for himself and as agent for a like number of proposed purchasers, whereby the Hartline people agreed to sell to Harriman and his friends their holdings, upon terms therein mentioned. Certain questions arose between Hartline and Harriman respecting the construction of that contract. Harriman claimed the right to complete the purchase, while Hartline denied such right, basing his denial upon Harriman's alleged default. The two agreed to submit the construction to legal counsel, and, accordingly, arranged that Harriman should procure a legal opinion construing the contract and forward same to Hartline, who had gone East. In December, 1906, Harriman was brought to our office by a friend of his, who was an old friend and client of our firm, and was

by such friend introduced to the writer. My opinion in writing construing the contract was requested by Harriman, furnished by me, and paid for. No question of the Government's rights or of the relations of any of the parties to the Government was involved. It was a question solely of the construction of the contract as between the buyers and sellers. But Hartline, it seems, was not perfectly satisfied with my construction. In the meantime Judge Ballinger, having resigned, returned to Seattle and resumed his partnership relations. Some time afterwards, Hartline being in Seattle, he and Harriman called at our office and again submitted the matter to Judge Ballinger, who verbally confirmed the construction previously given by me. No further charge was made, and, so far as I know, the parties accepted the construction and completed the sale. I learned only on the 22d instant from one of our old firm that Harriman is at present secretary of the Alaska Petroleum and Coal Company. I don't know how long he has been such secretary, and if Judge Ballinger ever knew or knows now of any connection of Harriman's with that corporation, I am unaware of it.

Another of Judge Ballinger's relationships grows out of the following: Some time during the summer of 1908 he was retained by an eastern client to attend to the matter of a proposed purchase by the client of an interest in what he called the "Katalla Anthracite Coal Fields Railway Company," a name which none of us had ever heard before. Ex-Mayor White, of this city, was the promoter of the company. An inspection of the corporate records disclosed them to be in a muddled condition; in fact, it was not a properly or regularly organized corporation at all. This situation resulted in Judge Ballinger being asked to construe the act of Congress approved May 28, 1908, and to prepare and file amended articles of incorporation to enable the company to come under that act. The matter of the location of claims or acquiring patent to the same was never in any manner considered, his whole employment being confined to the matter of the preparation of proper papers and the purchase for his client of an interest in the corporation.

Judge Ballinger's next connection was the preparing, during the summer of 1908, of articles of incorporation and by-laws for two companies, namely, "McKenzie Anthracite Coal Company" and "Carbon Mountain Anthracite Coal Company." Nothing was discussed or done with reference to titles or to procuring patents, his employment being limited to the preparation of articles and by-laws.

His only remaining connection is this: One W. G. Whorf filed with the proper officials at Seward his application for coal-land patent, which was duly forwarded by mail to the registrar and receiver at Juneau. The papers having been lost in transit, certified copies were presented by Whorf and refused by the registrar and receiver. On behalf of Whorf, Judge Ballinger laid the facts before Commissioner Dennett, who, on considering all the affidavits, instructed the registrar and receiver to receive the same for filing. Nothing further was ever done by Ballinger.

The above is submitted as a complete embodiment of Judge Ballinger's every act in relation to coal lands in Alaska.

Before closing this article permit me to say that, knowing him as I do, I am satisfied that to undermine his influence or to depreciate his standing by a misunderstanding of his relations or by a misconstruction of his attitude will tend to injure rather than to promote the principles embodied in the conservation of national resources. He is a man of thought and deeds, not of words. His every thought and impulse is in harmony with that sympathy existing among the common people. He came to this State twenty years ago a young lawyer, without money, without friends, without backing, and without influence. As a result of merit he was elected superior judge, which office he held for four years. During this period he wrote Ballinger on Community Property, which is recognized by jurists as the best authority extant on this subject, which constitutes the system in a number of the States of our Union. He was later employed to codify the statutes of our State, and Ballinger's Annotated Codes and Statutes is the official code of this State. Declining a flattering offer to write a work on federal procedure, he, with Hon. Alfred Battle and myself, formed our copartnership more than twelve years ago. While enjoying a satisfactory practice, yet we were never the regular counsel for any public-service corporations. The reports will show many cases successfully waged against such, and it was after almost four years of strenuous litigation, followed by two hearings in the Supreme Court of the United States, that our firm procured from that great tribunal a construction of the railroad grants which conserved and confirmed to the people millions of dollars in value of mineral resources theretofore claimed by the numerous beneficiaries of railroad grants. (See case of *Soderburg v. N. P. Ry.*, 99 Fed. Rep., p. 506; 104 Fed. Rep., p. 425; U. S. Sup. Ct. Repts., vol. 198, p. 526.)

Judge Ballinger is a well-balanced, logical thinker, rather than a verbose talker, so that to know and understand him one must be intimately associated with him. While

Commissioner of the General Land Office he thought out and recommended the system concerning the coal resources of Alaska which was subsequently enacted by Congress into law. (See acts——.) In harmony with his solicitude concerning the conservation of national resources he prepared, without compensation, the articles of incorporation of the Washington Conservation Association. He is a man who brings to any subject committed to him the most careful and painstaking thought, and in the management of any interests or in the performance of any duty intrusted to him habitually masters every detail thereof. He is now while I write this somewhere in the arid regions of Arizona or New Mexico applying his usual industry and tireless energy toward the study and understanding of the schemes for reclaiming and converting the desert regions into an empire of contented citizens, and, as an early convert to and an earnest believer in the principles of conservation of national resources, I venture the opinion that if permitted, unhampered, he will, in his own quiet way, so build, so execute that the results of his untiring zeal, his unflagging industry, his unswerving devotion in behalf of a cause uppermost among the subjects of his deepest solicitude, when measured by the highest practical benefits possible from systems founded in wisdom and carried out with judgment, will not only justify the confidence of the President in appointing him, but will convert the tones of present criticism into plaudits of future commendation.

Respectfully, yours,

J. T. RONALD.

Mr. PEPPER. Will you be kind enough to read that answer, Mr. Garfield, to the letter of April 8, 1908.

(Mr. Garfield then read the letter of April 8, 1908, from Secretary Garfield to Mr. Ballinger, which appears heretofore as part of Exhibit D to Mr. Ballinger's letter of November 15, 1909.)

Mr. PEPPER. Mr. Garfield, do you find in Mr. Ballinger's letter of April 8 any statement of his authorship of the Cale bill?

Mr. GARFIELD. I do not.

Mr. PEPPER. Do you find in that letter any reference to the expediency or propriety of validating entries not made in good faith upon payment of the old price?

Mr. GARFIELD. I do not.

Mr. PEPPER. What, in point of fact, did you understand Mr. Ballinger's position to be at that date?

Mr. GARFIELD. I supposed that he was in accord with my views that I have stated to the committee, and that the only point of difference that he and I had had regarding this character of legislation was whether or not the sale or the leasing proposition for future coal disposition was more advisable.

Mr. PEPPER. Had you before you when you wrote your letter of March 16 the record of Mr. Ballinger's testimony before the House committee?

Mr. GARFIELD. No, sir; I had not.

Mr. PEPPER. What did you know about that?

Mr. GARFIELD. I did not have that called to my attention, nor do I remember to have seen it until this year.

Mr. PEPPER. What year do you refer to?

Mr. GARFIELD. 1909.

Mr. PEPPER. In point of fact, did you ever propose to validate entries not made in good faith on the payment of the \$10 price?

Mr. GARFIELD. Only so far as was contained in the recommendation for general coal legislation, which was known as the Mondell bill, affecting all coal matters.

Mr. PEPPER. How about the Alaska situation?

Mr. GARFIELD. I did not have that in mind regarding the Alaska situation, nor did I ever intend to suggest that other than good-faith entries in Alaska alone should be validated, or consolidation permitted.

Mr. PEPPER. When you wrote that letter of April 16, what understanding had you as to whether or not Mr. Ballinger had so advocated?

Mr. GARFIELD. I did not so understand that he had. I supposed that was the only difference, that I have indicated, between the leasing and the sale systems.

Mr. PEPPER. Will you kindly look on page 1239 of the testimony—

Mr. GARFIELD. Before leaving that matter, Mr. Pepper, I think that I made a mistake in an answer to a question that was propounded to me by one of the members of the committee relative to whether or not an entryman could take coal or cut timber. As I recollect it, the question had to do with the time after final payment had been made.

The CHAIRMAN. Final receipt.

Mr. GARFIELD. Final receipt. I misunderstood it. After final receipt, my understanding is, that there may be, under certain conditions, action taken by the entryman, but prior to final receipt there would be no authority to either cut timber or take coal.

The CHAIRMAN. I think you have got the right discrimination now, but you did not before.

Mr. GARFIELD. No, sir. As I recall the question, I think I unintentionally misstated it.

The CHAIRMAN. I find here a decision of the Supreme Court of the United States, in which that court has decided that after final entry is made and receipt issued that the land is taxable.

Senator SUTHERLAND. The statute of limitations would run in favor of an adverse occupant.

Senator PURCELL. I know that is correct. There is no question about that, but the title does not pass from the Government.

Mr. PEPPER. May I refer you to page 1239 of the testimony, at the top of the page, which is a portion of the letter of November 15, heretofore referred to. At the point indicated Mr. Ballinger quotes section 9 of a certain proposed bill and, after citing it, says: "This goes further than I ever suggested." What is the fact about that?

Mr. GARFIELD. Mr. Ballinger is incorrect in making that statement, because he has quoted there only a portion of section 9 and has not stated that section 9 was a section proposed by the general coal bill, the Mondell bill, known as H. R. 19421, I believe. The statement is misleading because it gives the impression that section 9, or the portion quoted above, applied simply to the Alaskan claims and did not explain the full provisions of the bill to which section 9 referred, and of which it was a part, as explained in my report to the House committee at the time that bill was under discussion.

The CHAIRMAN. But, Mr. Garfield, your recommendation as to that section 9 went to this extent, that you were quite willing to condone the prior fraud if they would pay the higher price that you maintained for. Was that not the effect of the section as amended; that is, that the fraud would be condoned if they would pay a higher price for the land?

Mr. GARFIELD. The section had this purpose, or rather put it this way: The effect of the section was this, that if the entire coal bill as suggested was passed, and the Government adopted the new policy of dealing with its coal deposits, then I was willing, as explained to

the committee in my report, to permit the validation of all entries whether valid or invalid, legal or illegal, at the new classified price, and under the further condition that then those entrymen, or those who received the patents, subjected themselves to the other conditions of that general coal bill. So that it was a very different proposition from the single Alaska bill.

The CHAIRMAN. I know; but it amounted to this, Mr. Garfield, that if they would comply with this new condition as to the increase in price and as to the antitrust provision, that then you were willing to condone the prior fraud?

Mr. GARFIELD. And the further provision that they should return to the Government the land that they had either patented in excess of the 2,500, or all claims that they made—under this condition, yes; I was willing that the question of whether or not fraud had been committed in the original locations should be condoned.

Mr. JAMES. What was the difference in the price that this land would have cost those persons trying to have it patented under the old law and under the new law, which you advocate?

Mr. GARFIELD. There would be very wide differences, in accordance with the character of the coal in this particular bill. Take, for example, the Alaskan bill, and applying it to the Cunningham case, under the old law, of the 2,560 acres, the Government would have received therefor \$25,000 plus, whereas under the classified price the lowest price that was then presented to me, I believe, was in the neighborhood of \$200 an acre, and various larger prices had been placed upon that coal; but if at \$200 an acre, the price for the 2,560 acres would have been approximately \$500,000 plus, so that the difference between the two bills would have meant either \$25,000 or \$500,000.

Mr. JAMES. About \$425,000?

Mr. GARFIELD. On the basis of \$200 an acre, which was limited, as I recall it, at 1 cent a ton.

Mr. PEPPER. May I direct your attention to page 1238 of the record, Mr. Garfield, where I find this language in Mr. Ballinger's letter of November 15:

Mr. Garfield has, so far as I know, made no effort to learn the real facts relating to any of these matters or to justly estimate my motives in connection therewith, which I very much regret, in view of our long friendship and in view of the fact that upon my retirement from the General Land Office he expressed to me in writing his appreciation of my services to the Government, and at which time he evidently believed that my motives in all matters affecting the public service were of the highest character. I attribute the change of spirit to the influence of others who have poisoned his mind with untruths. I have consistently endeavored in my official acts to avoid anything that would appear to be a reflection upon my predecessor, except where legal and administrative action seemed necessary.

Is there anything that you wish to say in regard to that?

Mr. GARFIELD. That has reference to the letter that I wrote to President Taft under date of November 6, and to which Mr. Ballinger was making answer in the letter which has just been placed in evidence.

Mr. PEPPER. I am going to recall your attention to that letter of November 6, presently.

Mr. GARFIELD. So far as this statement is concerned, Mr. Ballinger is in error in supposing, as he expresses it there, that I had not made an effort to learn the real facts. I had, in fact, made every effort to obtain the facts regarding the matters concerning which I wrote the

President in November, and had obtained what I believed to be the record of the transactions concerning which I wrote the President.

Mr. PEPPER. And when you speak of writing the President in November, you refer to the letter of November 6, which appears on page 1232 of the record?

Mr. GARFIELD. That is the letter to which I refer.

Mr. PEPPER. Before questioning you about that letter, may I ask you whether you are able to say how far the power of withdrawals pending congressional action has been exercised in the last six or seven months; is there any public document which would enable the committee to be informed on that point?

Mr. GARFIELD. I have in hand here a statement issued by, or purporting to be issued by, the Geological Survey, being release of Sunday morning, March 6, of this year, 1910. It is a statement of a conservation work of the Geological Survey for the year ending March 4, 1910, and this statement, I think, was published on March 6 in the press.

Mr. PEPPER. Does that indicate that withdrawals have been made under the executive authority?

Mr. GARFIELD. It does to a very large extent, both for coal lands, for phosphate land, for oil land, and for power site.

Mr. PEPPER. Mr. Chairman, I suggest, without taking the time to read that document referred to, that it be handed to the stenographer to be inserted in the record.

The CHAIRMAN. Is there any objection? The Chair hears none, and it is so ordered.

[For release Sunday morning, March 6.]

CONSERVATION WORK OF THE GEOLOGICAL SURVEY FOR THE YEAR ENDING MARCH 4, 1910.

During the last twelve months the conservation work of the Geological Survey has included investigations relating to coal, oil, and phosphate deposits and to water-power sites on the public domain.

PUBLIC COAL LANDS.

Coal-land withdrawals were made covering 7,675,000 acres not previously withdrawn and the form of withdrawal affecting an additional 9,000,000 acres was changed to cover all forms of entry instead of coal entry alone. The new regulations of April 10, 1909, for the classification and valuation of coal lands, materially increased the sale price of these lands and fixed more definitely the standards of coal classification. Thus, for example, under the old regulations, in eight widely separated townships the total area classed as coal land was 66,320 acres and the sale price was fixed at \$2,088,600, whereas, under the new regulations the area in the same eight townships classed as coal land is 126,663 acres and the sale price is \$15,777,668, an increase in area of over 100 per cent and in price of over 600 per cent.

Under the old regulations the maximum price per acre for coal land was fixed at \$75; under the new regulations the maximum price per acre thus far fixed for any particular area is \$465. The maximum valuation of a single township under the old regulations was \$949,600; under the new regulations it is \$9,206,894. Special efforts have been made to release from existing withdrawals all noncoal areas, and of the total area classified during the year, amounting to 17,200,000 acres, much the larger part, or about 14,000,000 acres, has been classed as noncoal land. The sale price of the 3,436,000 acres classed as coal land has been fixed at \$191,490,000. The same land, if sold at the minimum price fixed by law, would have yielded \$62,477,000.

PUBLIC PHOSPHATE LANDS IN WYOMING, IDAHO, AND UTAH.

Phosphate-land withdrawals in force March 4, 1909, covered all vacant public lands in an area comprising 4,493,551 acres in Wyoming, Utah, and Idaho. During the year areas covering 2,389,141 acres were restored to entry, for the field work

showed that they contained no phosphate. Additional withdrawals including 399,693 acres have been made and the form of withdrawal has been changed so as to cover entered as well as vacant lands. All unpatented lands in an area of 2,504,103 acres are now affected by phosphate withdrawals.

WESTERN PUBLIC OIL LANDS.

The California oil-land withdrawals made prior to March, 1909, aggregating 2,313,482 acres, prevented the acquisition of the withdrawn lands only under the agricultural land laws. All lands covered by these withdrawals could be legally exploited for oil or other minerals. During the year these lands were excepted from acquisition as oil or as mineral lands as well as for agricultural use. New withdrawals were made in the States of California, Colorado, Oregon, Utah, and Wyoming of a total area of 2,130,510 acres. In California there were restored to entry 956,916 acres that field examination had shown to be nonoil land. The area now covered by oil withdrawals is 3,487,076 acres.

PUBLIC POWER-SITE WITHDRAWALS.

On March 4, 1909, power-site withdrawals were in force covering vacant public lands on 29 rivers in 9 States. These withdrawals have since been reviewed by the Geological Survey, the form of withdrawal has been changed to include all entered as well as all vacant lands and the lands that were found to be not valuable for the purpose for which the withdrawal was made have been restored to entry. New withdrawals have been made along 97 rivers covering land not involved in previous withdrawals and increasing the total number of States affected to 11. These power-site withdrawals now cover about 1,300,000 acres of vacant public land and 200,000 acres of entered land.

Mr. PEPPER. I also, in this same connection, offer in evidence a letter from Mr. Frank Pierce, First Assistant Secretary to the Secretary of the Interior, dated July 31, 1909, and the Secretary's reply of August 6, 1909, both in connection with the exercise of the executive power to withdraw.

Senator ROOT. What becomes of the paper that was offered but was not passed upon?

Mr. VERTREES. I understood that it was to be printed.

Senator ROOT. Nothing was said about that.

The CHAIRMAN. Is there any objection to the printed slip going into the record? The chair hears none and it is so ordered.

(The printed slip appears above.)

Mr. PEPPER. The letter of July 31 is as follows [reading]:

(Copy.)

FRANK PIERCE,
FIRST ASSISTANT SECRETARY.

DEPARTMENT OF THE INTERIOR,
OFFICE OF FIRST ASSISTANT SECRETARY,
Washington, July 31, 1909.

MY DEAR MR. SECRETARY:

Senator Guggenheim has introduced S. 2984, a bill to grant certain lands to the town of La Junta, Colo., for an arid park. He wants the land withdrawn pending congressional action. There is no law authorizing the withdrawal of these lands. It has, however, occurred to us that you might wish to make the withdrawal upon the same basis that you are withdrawing power sites. I send the papers to you for your action. Other Congressmen have repeatedly in the past and are now asking for similar withdrawals. So far as I know the policy of the department has always been not to make such withdrawals. I have directed the Land Office to hold the land in status until you can settle the matter yourself.

Very respectfully, yours,

(Signed) FRANK PIERCE,
First Assistant Secretary.

HON. RICHARD A. BALLINGER, LL. D.,
Secretary of the Interior, Seattle, Wash.

P. S. Since dictating the above, Congressman Taylor, of Colorado, has asked us to withdraw two sections of land for a picnic ground in western Colorado.

The answer is as follows [reading]:

[Copy.]

THE SECRETARY OF THE INTERIOR,
WASHINGTON.

SEATTLE, WASH., August 6, 1909.

MY DEAR MR. PIERCE: I herewith acknowledge your letter of the 31st ultimo in reference to Senator Guggenheim's request for the withdrawal of certain lands for an arid park. I have signed the form of withdrawal, O. K'd by Mr. Lawler, solely on the ground of the pendency of bill No. 2984.

I am not wholly in harmony with this practice, but presume it is justified by precedent. I fear that it is not warranted by existing law. I do not think it advisable to hold too strictly to the precedent established in temporarily withdrawing power sites.

Very truly, yours,

(Signed) R. A. BALLINGER, *Secretary*.

HON. FRANK PIERCE,
First Assistant Secretary,
Department of the Interior, Washington, D. C.

[Encl.]

Mr. PEPPER. Mr. Garfield, turning now to page 1232 of the testimony you find there, I think, your letter of November 6 to the President, to which reference has already been made. Would you be kind enough to read that letter—as it will take a good deal of time to read the letter as a whole, perhaps we could save time by simply directing Mr. Garfield's attention to the particular point I want to question him about.

The CHAIRMAN. Is it not in evidence now?

Mr. PEPPER. Yes, sir; it is already in the record, at page 1232, and I did not want to take more time than necessary, unless Mr. Garfield desires to read the letter as a whole.

Mr. GARFIELD. I do not care to.

Mr. VERTREES. It was read to the committee as a whole.

The CHAIRMAN. It has been read, I think.

Mr. PEPPER. If it was read, then, perhaps, it is not worth while to read it further. I wanted to direct your attention particularly—

The CHAIRMAN. Can you not direct that in your argument? It is not necessary now to read that. It has been read in full.

Mr. PEPPER. I am going to ask certain questions respecting the subject of reclamation certificates therein referred to, and I will ask you, in the first place, to look at the top of page 1190 of the testimony, where there appears the President's letter of September 13 to Mr. Ballinger, dismissing the Glavis charges, and in the middle of the page a reference to this matter of reclamation certificates and the prior course of the department in reference to them.

Mr. GARFIELD. On page 1190 the following language occurs:

In connection with the same charge weight has been given to the fact that you have declined to carry out the contract made by the Reclamation Service with homesteaders and entrymen, by which certificates were issued to entrymen for work done and material furnished, with a view to enlarge the projects of the Reclamation Bureau.

You brought up the question of the legality of such certificates in a cabinet meeting and were directed to submit it to the Attorney-General. That officer has, very properly, in my judgment, decided that it is at variance with an explicit prohibition in the reclamation law to issue such certificates. The fundamental mandate of that law is that no project shall be entered upon until there is money enough in the reclamation fund to pay for the project or part thereof contracted for.

Mr. PEPPER. Does the statement you have just read accord with your understanding of what the reclamation certificate system was?

Mr. GARFIELD. It does not.

Mr. PEPPER. The question was asked of Mr. Pinchot and he was not able to answer it. Could you state briefly what the reclamation certificate system was?

Mr. GARFIELD. That certificate system in brief was this: The settlers under certain projects desired to have further allotments made to those particular projects for extending lateral canals. The various allotments to the reclamation projects had been made from time to time by the Secretary of the Interior and were revised quarterly, and might be revised at any time by him. I did not feel inclined to make any allotments to various projects where the settlers were making these requests. The Reclamation Service, in order to meet those conditions and give to the settlers who were themselves willing to do the work and to put themselves in a position where they might repay the Government more readily than under the ordinary system, in conference with such settlers and water users' association, the director of the Reclamation Service and the chief engineer outlined the plan which was finally adopted by me, known as the co-operative certificate method of dealing with certain water users' associations.

The statement in the President's letter seems to be based upon the idea that there was no money available in the reclamation fund for the doing of such work or the entering into such contracts. It was for that reason in my letter to him of November regarding that matter, feeling that he did not have in mind, when his letter was written, the facts upon which to base a judgment as to the wisdom or nonwisdom of the certificate plan. There was at all times during my administration an available balance to the reclamation fund of more than \$2,000,000 in excess of all outstanding obligations, including the cooperative certificates authorized for these water-users' associations. Therefore, if the opinion of the President was based upon a misapprehension of the facts, I desired to have him understand that the facts were as I have just stated; and it was for that reason I took up with him, in my letter of November, the question of the reclamation certificates.

Now, to explain a little further, in answer to your question, if on a given project the settlers desired to do what I have indicated, namely, increase a lateral and cover more land with water than was covered by the then proposed construction, they made a proposal to the department that they would themselves build that lateral and turn it over to the projects, complete, in accordance with the plans and specifications of the project engineers. As I say, there were ample funds to allot for that purpose had I seen fit to do it; but had I allotted the funds for that purpose, they would have been paid back in the ten-year period, one-tenth each year. Instead of that, these settlers, who were very anxious to put the water on their lands, stated that they would construct themselves or pay for the construction of that portion of the project; and that instead of accepting cash for their work and material that they put into it, they would among themselves issue these certificates, which would indicate what proportion of work was done or what material furnished by each one of those settlers; and that thereafter, within one or two years, when the

Secretary of the Interior, through the project engineers, should fix the charges that were to be paid upon those lands by those settlers, the Secretary of the Interior would deduct from the charge to be fixed against those lands the amount which was represented by these certificates outstanding in the hands of the settlers under that project. In other words, if the charge fixed by the Secretary was \$30 an acre upon that particular project and certificates had been issued to the amount of \$5 an acre, then the holders of those certificates would have the price of \$25 fixed upon those lands rather than \$30, and they would then pay for the balance, namely, at \$30 in accordance with the terms of the act, in annual installments. In other words, it was simply anticipating the return of the money, obtaining it back in one or two years instead of ten years. Instead of paying out the cash for construction, which the Secretary had a right to do, and for which there were available funds in the Treasury, the Secretary made this agreement of the character I have indicated. And, having those facts in mind, I believed that the President did not have before him the facts relative to the conditions under which those cooperative agreements were entered into.

Senator ROOT. Are those agreements embodied in written instruments?

Mr. GARFIELD. They are. They were issued by the water users' associations themselves. The Government was not a party to them, and was not obligated in any sense upon them.

Senator ROOT. It might be useful for us to have some samples of those agreements.

Mr. GARFIELD. I do not know whether they have been introduced in any of the papers or not.

Mr. PEPPER. They have not been, but will be.

Senator ROOT. Mr. Garfield, while you are on this subject, I wish you would explain the relation between this method of transacting business which you have now described and the occasion, if there be an occasion, for the issue of thirty millions of certificates or bonds of the United States for the assistance of these reclamation projects. I note the President says in his letter, after speaking of these cooperative certificates, that the Government had been involved in certain obligations and he would ask Congress to provide for them. He then recommended the issue of thirty millions of certificates, and the bill has passed the Senate providing for it and it is now pending in the House. Now, I would like to know whether you consider there is occasion for the issue of those certificates; and if so, what is the relation between this necessary aid to the Government and the method of transacting the business?

Mr. GARFIELD. I think there is but little, if any, relation between the proposal to issue the thirty millions of bonds and the cooperative certificate plan. The cooperative certificate plan originated with those water users who were anxious to immediately use the water upon lands which were not then reached by the proposed projects. The total amount of certificates which were authorized was less than \$1,000,000.

Senator ROOT. That is, the cooperative certificates?

Mr. GARFIELD. Yes; cooperative certificates. My impression is it amounted to \$915,000, of which probably not more than \$750,000 had been actually issued. The others were authorized but not issued by the water-users' association.

The CHAIRMAN. Do you mean dollars or certificates?

Mr. GARFIELD. Dollars. As I understand the proposition for the issuing of the thirty millions, it goes far beyond any plan of relieving the situation to which I have referred relative to the cooperative certificates; and has for its purpose the early completion of very large sections of certain reclamation projects which were not contemplated for early completion. A reclamation project as a whole may involve ten or fifteen millions of dollars. The Secretary under the law may determine to construct but a small portion of that, and those small portions are called certain definite units. I did not believe that it was either necessary or wise to ask for a large additional lump sum to complete at a very early date all of the projects that had been contemplated by the former Secretary of the Interior who preceded me. I felt that it was very much wiser to carry the work on gradually in accordance with the funds that would be derived from the sale of the public lands year by year, and the return to the reclamation fund of the amount that would be collected from the water users in annual installments. And the cooperative certificate plan was simply used in certain special cases where the water users themselves were willing to do the work in the manner that I have indicated. Therefore there is no real connection between the proposition to issue thirty millions of bonds and the proposition of issuing these cooperative certificates of the character that I have indicated.

Senator ROOT. Now, do I understand that you do not think it is necessary to issue the thirty millions?

Mr. GARFIELD. I do not.

Senator ROOT. How about the necessity of issuing any quantity of bonds?

Mr. GARFIELD. I think there is no need of issuing bonds.

Senator ROOT. Are there, so far as you know, any hardships involved in the present status of the reclamation projects?

Mr. GARFIELD. There are a number of individual cases.

Senator ROOT. From what does this hardship arise?

Mr. GARFIELD. This hardship arises from the failure on the part of entrymen to appreciate the difficulty of developing lands under irrigation projects, and of going upon those lands long prior to the time that water, by any possibility, could be delivered to them. They were fully advised of that by public notices, by notices from each of the project engineers, and they went at their own hazard upon the projects and attempted to make settlements. And while it is true that there are cases of individual hardship by men doing that, it was not a hardship for which the Government was responsible.

Senator ROOT. They were on arid parks, I suppose?

Mr. GARFIELD. Possibly, arid parks.

Senator SUTHERLAND. Mr. Garfield, let me ask you, don't you think that the various reclamation projects now authorized and under way, with a sufficient amount of money to be expended, can be completed at a very much earlier date than they could be if we depended upon the ordinary revenues arising from the sale of public land?

Mr. GARFIELD. Without doubt, if Congress sees fit to make that appropriation, more work will be done.

Senator SUTHERLAND. And the work will be brought to an end sooner?

Mr. GARFIELD. I am not so clear about that, Senator. The reclamation work is by no means free from difficulty and uncertainty. Many of our projects, or some of them, are necessarily experiments; and it seems to me not the part of wisdom to invest, or to anticipate rather, the sale of the public lands for the next five or ten years; but it is very much better to proceed along the course that has thus far been followed, and develop each project in accordance with the experience as shown on that project.

Senator SUTHERLAND. I am not speaking of the disposition of the land to settlers after the project has been completed; I am asking you whether the project itself, or the projects themselves, can not be completed at an earlier date?

Mr. GARFIELD. Physically, they could be completed at an earlier date.

Senator SUTHERLAND. That is what I mean, physically.

Mr. GARFIELD. As far as the mechanical construction is concerned; yes.

Senator SUTHERLAND. And at a very much earlier date?

Mr. GARFIELD. Without doubt, if you spend thirty millions instead of five.

Senator SUTHERLAND. And at a very much less cost in the long run?

Mr. GARFIELD. I would somewhat doubt that. That is a matter of question.

Senator SUTHERLAND. If you have more men at work you are expending more money in a less length of time and your management or your overhead charges are not greatly increased by that, are they?

Mr. GARFIELD. They are not. On the other hand, you are more liable to make mistakes, if you engage in very large construction, than you are in proceeding along the lines I have indicated.

Senator SUTHERLAND. Why so, Mr. Garfield?

Mr. GARFIELD. Because, in some instances, the questions of how and where to build are matters of estimate, and mistakes may be made. A project that seems to us all right to-day, and we use our best judgment in developing and constructing that, we may find from experience that it might have been done in a better way or in a more advantageous way to the development of the lands below.

Senator SUTHERLAND. They would be mistakes on the part of the engineers?

Mr. GARFIELD. They would be; yes.

Senator SUTHERLAND. And not in the actual work of construction in accordance with the plans, but mistakes in the plans themselves?

Mr. GARFIELD. Quite right.

Senator SUTHERLAND. And those plans are already made?

Mr. GARFIELD. Some of them. They are not by any means made in detail; or were not—I am speaking about the time I knew definitely about them.

Senator SUTHERLAND. But plans have already been made for the reclamation projects which it is contemplated will be completed with this thirty-million loan?

Mr. GARFIELD. I so understand. They are the tentative plans adopted under Secretary Hitchcock.

Senator SUTHERLAND. Whether the people are to blame for them or not, it is a fact that upon many of these projects there are many settlers who have been waiting, some of them for years, for the completion of the projects in order to irrigate their lands?

Mr. GARFIELD. Without doubt that is true. I saw in my trip through the West all of those people I could, and called them together in each instance and discussed with them this very question we are discussing now.

Senator SUTHERLAND. And they are living upon the lands under circumstances of great hardship, some of them?

Mr. GARFIELD. Some of them, without doubt.

Senator SUTHERLAND. And it would certainly greatly relieve that class of people if this work could be hurried along and completed?

Mr. GARFIELD. There is not the slightest doubt that individual relief would come under those circumstances.

Senator SUTHERLAND. That is pretty considerable in extent, is it not?

Mr. GARFIELD. I think not; or was not from the investigation I made during those two years. It would seem to me at that time a very small per cent, and certainly not large enough to warrant me in asking Congress to anticipate by a bond issue.

Senator SUTHERLAND. I am asking you that because I have recently been over a great many of those projects with the Irrigation Commission, and the people are complaining in great numbers.

Mr. GARFIELD. There are, no doubt, complaints.

Senator SUTHERLAND. I was going to ask you another question about this cooperative plan. The cooperative plan of issuing certificates contemplated the building by the farmers of certain laterals that were not within the immediate contemplation of the Reclamation Service itself?

Mr. GARFIELD. That is correct—the immediate construction of that project within the contemplation, but not authorized by definite construction contract.

Senator SUTHERLAND. They were extensions of the plans—the immediate plans, at any rate—of the Reclamation Service?

Mr. GARFIELD. Yes; carrying the canals to lands not authorized to be reached under proposed construction.

Senator SUTHERLAND. And it was to be done by the farmers themselves?

Mr. GARFIELD. By the farmers themselves or by subletting it.

Senator SUTHERLAND. Either by them or under their directions?

Mr. GARFIELD. Or under their directions; yes.

Senator SUTHERLAND. The part which the Government played in that matter was rather that of bookkeeper, keeping accounts for them, was it not?

Mr. GARFIELD. Further than bookkeeper; it would not either permit, in the first instance, the contract to be entered into, nor would it accept the completed work unless the plans and the work were in strict accord with the engineers' approval.

Senator SUTHERLAND. Yes. What I meant by that, it involved no payment of money by the Government?

Mr. GARFIELD. None whatever.

Senator SUTHERLAND. These certificates were given as an evidence of the amount of work the individual farmers had done?

Mr. GARFIELD. Yes; as between themselves and issued by the Water Users' Association.

Senator SUTHERLAND. As a method of keeping their contracts among themselves?

Mr. GARFIELD. Yes; the contracts, as far as the Government was concerned, were made with the Water Users' Association, and as between the members of the Water Users' Association, these certificates were evidences of the amount of work or material furnished by each one of them.

Senator SUTHERLAND. And they were not redeemable in cash?

Mr. GARFIELD. They were not.

Senator SUTHERLAND. They could simply be turned in in payment for irrigation charges?

Mr. GARFIELD. In the manner I have indicated.

Mr. GRAHAM. How was the Government protected as to the amount of cooperative certificates to be issued and to see that an overissue was not made?

Mr. GARFIELD. That was handled by the engineer in charge. In the first instance, if the water users said "We will build to the extent of a hundred thousand dollars," the plan must be approved by the engineer in charge.

Mr. GRAHAM. The government engineer?

Mr. GARFIELD. The government engineer in charge, and the estimate of cost approved by him. Then when the certificates were issued to the various holders, the duplicate of that certificate was kept by the government engineer, so that there could be no over-issue or any forgery.

The CHAIRMAN. But, Mr. Garfield, we will take the case where the Government had made an estimate of the probable cost of the lateral ditch and the farmers or users along that ditch did the work. Now in issuing certificates to them, were those certificates based upon that estimate or were they based upon the actual value or cost of the work?

Mr. GARFIELD. The actual value and cost of the work and material furnished.

The CHAIRMAN. Now, under the reclamation law, the cost of any project of that kind is apportioned under the law among the different settlers in proportion to the amount of land they take under the homestead law?

Mr. GARFIELD. Yes.

The CHAIRMAN. And they have ten years in which to pay for it?

Mr. GARFIELD. They have.

The CHAIRMAN. And the law itself provided that that payment should be in cash, did it not?

Mr. GARFIELD. It did.

The CHAIRMAN. And your method was to substitute these certificates instead of a cash payment. Now, if you do it in that case could you not do it in a case of a settler who commutes his entry by paying cash—could you not commute it and provide some system whereby he could pay it in labor instead of cash to the Government?

Mr. GARFIELD. Oh, no; that is quite a different proposition.

The CHAIRMAN. Well, if you had the privilege of going around the law in one case would you not have it in another?

Mr. GARFIELD. But this was not going around the law.

The CHAIRMAN. Did the law contemplate the settlers should pay for this in certificates or in work instead of money?

Mr. GARFIELD. It is evident that there was nothing in the minds of the legislators who passed the law relative—

The CHAIRMAN. I am asking you with reference to the law. Does the law on its face contemplate that it should be paid in labor instead of in cash?

Mr. GARFIELD. The law makes no mention of that. The law leaves it in the discretion of the Secretary, the making of the contract provided there are available funds.

The CHAIRMAN. So, the Secretary could see fit in reference to all these reclamation projects, if you applied that principle, instead of accepting cash to accept the whole ten-year payment in labor. If he could do it to a certain extent, he could do it for the whole amount, could he not?

Mr. GARFIELD. And that, in fact, is what happens in a number of instances. For example, if the Secretary of the Interior determines to purchase outright the existing irrigation plant to use in connection with the project of the Federal Government, and that has been done in a number of instances, he can do either this: He can either pay for that directly, so many thousands of dollars, as may be agreed upon, or he may say to those settlers: "Instead of my paying you \$100,000 for this now, and then you paying back that \$100,000 to me in the ten-year period, if you are willing to pay it back instantly, I will make an agreement of that kind with you. If you are willing to pay it back in one or two years, I will make that agreement with you." It is a mere matter of bookkeeping for the Secretary to determine whether or not he will pay out \$100,000 to-day and take it back in ten year periods, or whether he will not pay it out to-day, and, by crediting it on the charge being made against that particular land, reduce that charge in the amount of that contract. In other words—

The CHAIRMAN. How do you apportion that labor among the different pieces of land?

Mr. GARFIELD. That labor is apportioned, not by the Secretary, but was done wholly by the Water Users' Association. The Secretary has nothing to do with that.

The CHAIRMAN. You mean instead of the Secretary apportioning that against the price of the land—

Mr. GARFIELD. The association apportions that. Not against the price of the land. I misunderstood your question.

The CHAIRMAN. I mean that these settlers take it under the homestead law with the condition that they must pay their proportionate share of the irrigation project—

Mr. GARFIELD. When the Secretary fixes that share. He determines how much shall be paid on each individual acre, and he does that equitably. It is an equitable distribution that the Secretary has to make of the charges against those various lands. In making that charge, if this cooperative certificate system is in vogue, the Secretary reduces the charge to be made by the amount of the outstanding certificates. In other words, instead of making a charge against the land of \$30 an acre, it would be \$25 or \$20 an acre, in proportion to the amount of work and labor performed by the settler, as evidenced by the outstanding certificates. In other words, it never reached the state of being a payment by the settler, not of cash but of certificates, but it was simply—

The CHAIRMAN. But it was applied to his pro rata cost of the land as cash, was it not?

Mr. GARFIELD. In the manner I have indicated, when the Secretary fixed the charge. Until the Secretary fixes the charges there is no amount due from the settler. Now, the Secretary must determine what that charge is to be, and that charge under the law must equal the total cost of construction. If, in the total cost of construction there are these outstanding certificates, he then fixes the charges against the land at the amount less those outstanding certificates. In other words, it never becomes a cash transaction between the settler and the Land Office or the Government, but is wholly within the discretion of the Secretary of the Interior to determine what charge shall be made against those particular lands; and the Government has this distinct advantage, that it does not pay out its money and lose the interest thereon, and ultimately the money is returned or made available to further contracts or further projects in one or two years instead of ten years.

Senator SUTHERLAND. Mr. Garfield; aside from the question of whether the issuance of the certificate was legal or illegal, the practical situation is that you would do this: If the work in a given case was done by the Government directly, and the farmer who would ultimately use the water was employed to do it, then there would have to be paid out to these farmers from the Treasury of the United States money sufficient to cover the cost of the work?

Mr. GARFIELD. That is correct.

Senator SUTHERLAND. Which same money would have been paid back by the farmers to the Government extending over a period of ten years?

Mr. GARFIELD. That is correct.

Senator SUTHERLAND. But by this method, no money was paid out of the Treasury at all. The farmers did the work and, in effect, got credit for it?

Mr. GARFIELD. Yes.

Senator SUTHERLAND. And had the application made upon the charges for their water service?

Mr. GARFIELD. Upon the reduced charge imposed upon those lands.

Senator ROOT. It is generally understood that they should have credit for it?

Mr. GARFIELD. Yes; that the charge upon the land would be reduced to the amount of the outstanding certificates.

Senator ROOT. That is the practical effect of it?

Mr. GARFIELD. That is the practical effect of it.

Mr. PEPPER. Then, Mr. Garfield, in further reference to the question that Senator Root asked awhile ago, is this the fact, that the certificate system was not a system for augmenting the size of the reclamation fund at all, but only for a method of bookkeeping within the limits of the fund?

Mr. GARFIELD. Entirely so. It was no attempt to augment the fund.

Mr. PEPPER. Whereas the proposed bond issue is a proposition to raise bond capital with which to augment the reclamation fund?

Mr. GARFIELD. It is.

Mr. PEPPER. So that when, in answer to a question of Senator Sutherland's, you said something about anticipating the sale of the public lands, you meant by that anticipating by borrowing on bonds as distinguished from utilizing the proceeds of the sale of the lands as they actually come in; is that correct?

Mr. GARFIELD. Yes; that is correct.

Mr. PEPPER. Heretofore the reclamation fund has consisted, has it not, of proceeds of sales of public lands?

Mr. GARFIELD. Plus the annual returns from completed projects and some other sources of revenue that come from sales of property and from leases made upon areas withdrawn.

Mr. PEPPER. And does that reclamation fund consist only in what has been covered by warrants, or does it consist of that which has been automatically added by the funds from collections from water users, even before remittance?

Mr. GARFIELD. The latter is the case. The difference between the total amount which the reclamation fund claims as available is the amount of cash in the Treasury to the balance of the fund and the amount that is in the course of selection from the sale of public lands and from time to time is turned into the Treasury and credited to the fund.

The CHAIRMAN. That is the main resource, is it not—money that is derived from the sale of public land?

Mr. GARFIELD. It is. Ultimately the other resource will be quite as great as the projects are completed.

The CHAIRMAN. One will increase and the other diminish in time?

Mr. GARFIELD. Yes; in time.

Mr. PEPPER. In point of fact, under the certificate system as you have described it, is the Government ever made a debtor to the people who do labor and furnish material beyond the limits of the available reclamation funds?

Mr. GARFIELD. It is not.

Mr. PEPPER. Mr. Graham asked a question respecting the check on overissue of certificates. Is it, or is it not, the fact that the invalidity of the overissue of certificates would be similar to the invalidity of a contract for construction or work or material made in excess of the fund?

Mr. GARFIELD. It would be.

Mr. PEPPER. Reference has been made also to the legality of this system. Do you understand that the legality of the system has been adversely decided by the Attorney-General, provided the system is what you have described, namely, a system of debits and credits within the limits of the available fund?

Mr. GARFIELD. I do not understand that the Attorney-General's opinion would be in opposition to such a plan as I have indicated to-day.

Mr. PEPPER. What, as you understand—and of course it is a question of your inference or understanding—what, as you understand it, is the basis of the Attorney-General's opinion on that point?

The CHAIRMAN. Have you read the opinion of the Attorney-General?

Mr. GARFIELD. I have. Both of them.

The CHAIRMAN. Are there two opinions?

Mr. GARFIELD. There are two opinions.

The CHAIRMAN. Are both of them the same?

Mr. GARFIELD. As I recall, the second may be considered a slight explanation possibly of the first. But in both it is clear to my mind, as I read those opinions, that the Attorney-General felt if there were available funds, then such a contract might be made. If there were no available funds, then such a contract could not be made.

The CHAIRMAN. Your opinion, to sum it up, is that the Attorney-General is clearly mistaken?

Mr. GARFIELD. No; on the contrary, I say that the Attorney-General is clearly right. If there were no available funds——

The CHAIRMAN. I refer to the main question, in holding these certificates that we have been talking about, to be illegally issued and outside the law, you think he is mistaken?

Mr. GARFIELD. I do not read his opinion as holding that these certificates are illegal. His opinion very clearly states that if there were available funds to the credit of the reclamation fund, then such contracts would be permitted; and his opinion seems to be based upon the idea in his own mind that there were no funds so available.

Mr. PEPPER. And that, Mr. Garfield, is a question of fact, is it not?

Mr. GARFIELD. It is.

Mr. PEPPER. As to whether such funds were or were not available?

Mr. GARFIELD. Yes.

Mr. PEPPER. And your understanding of the fact is that at all times there were available funds largely in excess of all liabilities, including reclamation certificates, whether merely issued or authorized?

Mr. GARFIELD. That is my understanding.

Mr. PEPPER. Are you able to say from your inspection of the file produced here as to whether the submission to the Attorney-General brought out the facts the way you understand the facts actually to have existed?

Mr. GARFIELD. It did not seem to me so to bring it out.

The CHAIRMAN. Was the submission made in writing?

Mr. PEPPER. We have got the files here, Mr. Chairman.

The CHAIRMAN. We had better take the letter of submission instead of Mr. Garfield's opinion of that.

Mr. PEPPER. I will take the order of the committee as to whether the whole matter shall be put in the record. It is pretty voluminous, but perhaps Mr. Vertrees and I can agree as to what portions of it shall go in.

Mr. VERTREES. I think it should all go in. The Attorney-General's opinion and the Comptroller's opinion and all.

Senator SUTHERLAND. That whole matter is in reference to these certificates?

Mr. VERTREES. Yes, sir; and I will add that we will bring a sample of the form of certificate and put it in also.

Mr. PEPPER. Mr. Chairman, as this file contains all the matter that was submitted to the Attorney-General, together with his two opinions, and contains also some matter not submitted, we will have to agree upon what part of it is proper to go in under Mr. Vertrees's request.

Senator SUTHERLAND. Mr. Garfield, may I ask you——

The CHAIRMAN. The whole document will be admitted.

Mr. PEPPER. Mr. Chairman, I do not want to be in the position of offering the whole document that I have in my hand until I have had it made quite clear, in my mind by Mr. Finney on the points stated. My understanding is that it contains some matter that was not submitted. If I am wrong, the whole document will go in; if not, only the part that is submitted.

Senator SUTHERLAND. Mr. Garfield, this matter of the issuing of certificates was submitted by you at some stage of the proceedings to the Senate Committee on Reclamation, was it not?

Mr. GARFIELD. It was, prior to the entering into of any contract.

Senator SUTHERLAND. And a full hearing had?

Mr. GARFIELD. Yes; we went over it in detail.

Senator SUTHERLAND. And do you recall the action of the committee?

Mr. GARFIELD. I do not now. I have not looked over the proceedings of the committee. I know some suggestions at the time were made, and it seemed to meet the approval of a majority of the members present.

Senator SUTHERLAND. The matter was fully discussed?

Mr. GARFIELD. Very fully discussed. It was likewise discussed by me with various other officials of the land office and of the Attorney-General's Department and with the Comptroller of the Currency, because at that time some suggestion had been made that the certificates, even if they were not issued by the Government, might in some way be in violation of the currency law.

Senator SUTHERLAND. My own recollection is not entirely clear about it; but, as I recall, your action was approved by the Senate committee.

Mr. GARFIELD. That, I do not recall, Senator. My impression was that it was generally acquiesced in, and it was after that I finally determined upon the adoption of the system.

Mr. PEPPER. Mr. Garfield, there are only two things I want to ask you now, and then we will conclude the examination. The first is whether or not you have received, or whether or not you did receive from the President, a reply to your letter of November 6.

Mr. GARFIELD. Yes; I did.

Mr. PEPPER. Have you that reply?

Mr. GARFIELD. I have only a copy. The original is at my office in Cleveland.

Mr. PEPPER. Unless there is some objection, Mr. Vertrees—Mr. Garfield says the original letter he has not with him and that this is a copy of it.

The CHAIRMAN. Is there any objection to that?

Mr. VERTREES. None at all. It can be verified.

The CHAIRMAN. That is a true copy, Mr. Garfield?

Mr. GARFIELD. It is. Well, I did not make it myself. I sent to my office for it, and I suppose it is.

Mr. PEPPER. Then, Mr. Garfield, at the last session the question came up respecting the production of a report of the Senate committee on public lands relating to the legality of temporary withdrawal of such public lands. Is that a copy of the document referred to?

Mr. GARFIELD. It is Senate Report No. 171, Calendar No. 183, second session of the Sixty-first Congress.

Mr. PEPPER. I simply offer them in evidence to complete the record.

The CHAIRMAN. Those documents are admitted.

(The papers just above referred to are as follows:)

[Copy.]

NOVEMBER 24, 1900.

MY DEAR MR. GARFIELD: Replying to your letter of November 6, I entirely agree with you that the difference between you and Mr. Ballinger is in your different conceptions of the power of the Secretary of the Interior to withdraw land from settlement, and it was Mr. Ballinger's fear that your orders of withdrawal were beyond the power of the Secretary of the Interior that led me to investigate the question and to concur with him in his view. When, however, he presented to me, as he did at the time that the order of revocation was made, or shortly after, the danger that water-power sites might be taken up pending the action of Congress, which was needed to treat them on the basis recommended by Mr. Roosevelt, I consented to a new order of withdrawal, provided the place of the water-power sites was definitely fixed by the Geological Bureau, which had the best sources of information, as it turns out, in respect to the places where the sites were. I think this is a considerable stretch of the Secretary's power, but I have been willing, in view of its previous exercise, to continue it with respect to more definitely ascertained water-power sites, until I can bring the matter sharply to the attention of Congress.

With respect to the cooperative work of the Reclamation Service and the issue of certificates I can only cite, in response to your views on that subject, the opinion of the Attorney-General as to the legality of the course taken. I read the opinion with a good deal of care and reached the conclusion that it was unanswerable. I greatly regret to differ with you in this regard, and I am especially sorry that you should think yourself drawn into a controversy in which there is no criticism of your administration, save a difference in the construction of the statutory powers.

With best wishes, believe me,

Sincerely, yours,

(Signed)

WM. H. TAFT.

HON. JAMES R. GARFIELD,
Cleveland, Ohio.

[Senate Report No. 171, Calendar No. 183, Sixty-first Congress, second session.]

The Committee on Public Lands, to whom was referred the bill (S. 5485) to authorize the Secretary of the Interior to make temporary withdrawals of areas of public land pending report and recommendation to Congress, or for examination and classification, having had the same under consideration, report it back recommending passage of the following amendment as a substitute for the entire bill. Strike out all after the enacting clause and insert the following:

"That the President may, at any time in his discretion, withdraw from settlement, location, sale, or entry any of the public lands of the United States and reserve the same for forestry, water-power sites, irrigation, classification of lands, or other public purposes, to be specified in the orders of withdrawals, and such withdrawals and reservations shall remain in force until revoked by him or by an act of Congress. The Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals."

The power conferred upon the President by the proposed substitute is a power that he has possessed and exercised almost from the inception of our public-land system and is a power that he still possesses and exercises.

The power of the President to reserve public lands from sale and entry rests upon various statutes, upon numerous decisions of the courts, and upon long-established and long-recognized usage.

The preemption act of 1830 (4 Stat., 421) provided that the privilege of preemption should not extend to any land "which is reserved from sale by act of Congress or by order of the President." This clearly gives the President the power, on his own motion, to make the reservation and leaves it in his discretion to exercise the power, and the power may be exercised through an executive department. In such cases it is deemed the act of the President.

In the case of *Wilcox v. Jackson* (13 Peters, 498) the reservation was made by the Commissioner of the General Land Office upon the request of the Secretary of War. This was held to be valid and to be the act of the President. (See p. 513.) In the case of the *United States v. Stone* (2 Wall., 525) this view is sustained.

The general preemption law of 1841 (5 Stat., 456), which remained in force until 1891—about fifty years in all—provided that—

"no lands included in any reservation by any treaty, law, or proclamation of the President * * * shall be liable to entry under * * * the provisions of this act."

In the Des Moines land grant act (11 Stat., 9) the reservation covered land—"reserved * * * by any act of Congress or in any other manner by competent authority for * * * aiding in internal improvements, or any other object whatsoever."

The reservation in this case was made in the first instance by the Secretary of the Treasury while he had charge of the public lands, and afterwards by the Secretary of the Interior after the public lands were placed under his jurisdiction; and the reservation made by these officials was held to be the act of the President and to be done by "competent authority." (*Wolcott v. Des Moines*, 5 Wall., 681.)

In the act providing for the survey of public lands in California (10 Stat., 246) are found the words "or reserved by competent authority," and this "authority" is held to be the President. (*Grisar v. McDowell*, 6 Wall., 363.)

In the case of *Grisar v. McDowell*, cited above, the point was raised that no reservation could be made except under a direct sanction of an act of Congress, and that the President did not possess the power to make such reservation. In reply to this objection the Supreme Court makes the following response:

"But, further than this, from an early period in the history of the Government it has been the practice of the President to order, from time to time, as the exigencies of the public service required, parcels of land belonging to the United States to be reserved from sale and set apart for public uses.

"The authority of the President in this respect is recognized in numerous acts of Congress. Thus, in the preemption act of May 29, 1830, it is provided that the right of preemption contemplated by the act shall not 'extend to any land which is reserved from sale by act of Congress, or by order of the President, or which may have been appropriated for any purpose whatever.' Again, in the preemption act of September 4, 1841, 'lands included in any reservation by any treaty, law, or proclamation of the President of the United States, or reserved for salines or for other purposes,' are exempted from entry under this act. So by the act of March 3, 1853, providing for the survey of public lands in California, and extending the preemption system to them, it is declared that all public lands in that State shall be subject to preemption, and offered at public sale, with certain specific exceptions, and, among others, 'of lands appropriated under the authority of this act, or reserved by competent authority.' The provisions in the acts of 1830 and 1841 show very clearly that by 'competent authority' is meant the authority of the President and officers acting under his directions."

Attorney-General Miller, in an opinion delivered by him (19 Op. Attys. Gen., 373), declared, when it was objected that certain statutes cited did not authorize the reservation in question to be made:

"To this I answer that in my opinion the validity of the executive order of August 5, 1878, and that of February 19, 1877, to which it was supplemental, rests not on that statute, but on a long-established and long-recognized power in the President to withhold from sale or settlement, at discretion, such parts of the national domain, open to entry and settlement, as he may deem proper."

While no express or direct statutory power has been given the President to create Indian reservations by mere executive orders, yet such power has been repeatedly expressed by the President, and it has been held that such power has been rightfully and lawfully exercised. (See opinion of Attorney-General Brewster, 17 Op. Attys. Gen., p. 258.) In this opinion are cited many instances of the creation of Indian reservations by executive orders.

The case of the *United States v. Payne* (2 McCrary's Circuit Court Reports, 289) is in harmony with and upholds the power of the President in such cases.

In the matter of our mining laws, section 2319 of the Revised Statutes of the United States provides that—

"all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase and the lands in which they are found to occupation and purchase * * *."

In the case of *Gibson v. Anderson* (United States Circuit Court of Appeals Report, vol. 65, 277) it was held that the proclamation of the President reserving certain lands for the use of the Indians had the effect of withdrawing the land reserved from the operation of the mining law quoted above. The court declares (p. 288):

"There can be no doubt that such reservation by proclamation of the Executive stands upon the same plane as a reservation made by treaty or by act of Congress."

The executive power of making reservations, conferred by the preemption law of 1841, also inheres and appertains to the homestead law.

Section 2289 of the Revised Statutes of the United States provides that—
 “every person * * * shall be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which such person may have filed a preemption claim, or which may, at the time the application is made, be subject to preemption at one dollar and twenty-five cents per acre; or eighty acres or less * * * at two dollars and fifty cents per acre.”

This section, in effect, excludes from the operation of the homestead law the same class of lands that were excluded from the operation of the preemption law of 1841, to wit, “lands included in any reservation by any treaty, law, or proclamation of the President for any purpose;” so that the President has the same power of making reservation in the case of land subject to homestead entry as he had in the case of lands subject to preemption entry.

The phrase “public lands,” found in our various land laws, is used in our legislation to describe such lands as are subject to sale or other disposition under general law, and not to lands that have been reserved by treaty, act of Congress, or executive proclamation. (*Newhall v. Sanger*, 92 U. S., 761.)

The timber-culture laws of 1874 and 1878, which remained in force until 1891, were limited to “public lands of the United States;” in other words, that law did not allow other than “public lands” to be secured under it, and lands reserved by the President by proclamation or executive order were not such “public lands.”

The timber and stone act of 1878 only applied to “unappropriated, uninhabited, and unreserved nonmineral land of the United States * * *.”

See also the following cases in support of the executive power of withdrawal and reservation: *Wolsey v. Chapman*, 101 U. S., 755; *Spencer v. McDougal*, 159 U. S., 62.

The statutes cited, as well as the decisions of the court above referred to, and other decisions that might be cited, as well as the opinions of the Attorneys-General, all go to show that the President of the United States has the inherent power to reserve for public purposes lands of the United States from location, sale, or entry.

It is only lately that this power has been doubted and questioned, and the object of the proposed substitute is to make it definite and clear beyond all dispute that the President possesses this power of withdrawal. The only change in existing law, as interpreted by the courts, is that part of the proposed substitute which provides that the “Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of withdrawals.”

Mr. BRANDEIS. Mr. Chairman, I desire to ask certain questions.

The CHAIRMAN. Very well.

Mr. BRANDEIS. Mr. Garfield, will you refer to Senate Document No. 248, bottom of page 67 and top of page 68. I call your attention to the telegram of Glavis to the commissioner of January 27, 1908, namely:

Coal entries mentioned in your letter January 7 should not be clear listed; letter follows.

And at the top of page 68 [reading]:

I thereupon immediately called upon Secretary Garfield and advised him of Glavis's communication, as Governor Moore had, as I understood, previously conferred with Secretary Garfield respecting this matter. I suggested to Mr. Garfield the advisability of holding up the patents, in which he concurred.

And I also call your attention to the passage in the same letter of Secretary Ballinger to the President, on page 76, of September 4, 1909, below the middle of the page. Mr. Ballinger says:

Immediately on receipt of Mr. Glavis's wire of January 22 I advised with Secretary Garfield, as indicated in my general statement, and the entries were thereupon suspended.

I will ask you, Mr. Garfield, whether such conference between Mr. Ballinger and yourself as is recited in those statements took place?

Mr. GARFIELD. As regards the first reference, on page 68, I do not recall the conference. I have no doubt though, that I may have seen Governor Moore, as I saw nearly all the men who came from Alaska in connection with Alaskan legislation; but I do not recall any such conference as is there referred to.

Mr. BRANDEIS. That is, you do not recall now, any conference between Commissioner Ballinger, as he then was, and yourself, in regard to the suspension of the issuing of the patents for the Cunningham claims.

Mr. GARFIELD. No, I do not. That would be another question, as I understand it.

Mr. BRANDEIS. You do not recall any such thing?

Mr. GARFIELD. I do not.

The CHAIRMAN. Mr. Garfield, referring to the top of page 68, did he not call your attention to the fact that he received that telegram from Glavis?

Mr. GARFIELD. I have no remembrance of any such statement to me by Mr. Ballinger.

Mr. JAMES. A matter of that importance where the department had acted upon it, Mr. Garfield, ordering lands of the value of those coal lands to patent, you were familiar with that, and if the agent had sent a wire protesting against it, and the Secretary or the commissioner had come and called your attention to it, would you have remembered it, do you think, or not?

Mr. GARFIELD. I can answer your question in this way. There was no reason, as far as the departmental practice was concerned, in bringing this telegram to my attention. It was not a matter in which the Secretary of the department had acted. It was a matter wholly within the land office.

The CHAIRMAN. Do you mean to say then, Mr. Garfield, that this suspension that followed, after Glavis's telegram, the suspension of clear listing them and taking them out of that order, was done, not on your order, but if it was done at all, it was done in the land office?

Mr. GARFIELD. Entirely so. I had nothing whatever to do with it.

The CHAIRMAN. So that was done either on Mr. Ballinger's motion, as commissioner, or some subordinate in his office?

Mr. GARFIELD. It was not done upon mine, certainly.

Senator ROOT. Mr. Garfield, a question was put to you about the importance of this matter. I have observed that there has been a growing appreciation of the importance or a growing estimate of value of these coal lands. I think I am right about that. Is it not a fact that there was a gradual, progressive increase in the estimate of the value and importance of the coal in Alaska?

Mr. GARFIELD. I think this is true, Senator, that every new investigation that was made of the conditions there gave us a clearer insight as to the probable value, and every new investigation made us feel that there was a greater value. On the other hand, when I first took charge of the department, Secretary Hitchcock—if the committee will pardon me for referring to a conversation with him, although he is not now living—he had in mind, as he told me then, the great value of the Alaskan field, and the suspensions that had been made of the coal entries there were due, in his mind, to the fact that it was a field of very great value—how much he did not know; and that it was a field that ought not to be disposed of in the manner that was then provided for under the law. And, when the department was turned over to me it was with the statement from him that as to the pending Alaskan situation he felt that it was a bad one, and that for that reason the suspensions had been made.

Senator ROOT. How long was that before the various discussions before the committees of Congress regarding these bills—the Cale bill, the Mondell bill, and the act of May 28, 1908?

Mr. GARFIELD. That was at the time and just prior to the time that I became Secretary of the Interior, namely, the spring of 1907, and immediately thereafter I went into the field, and from that time on the whole question of coal was actively discussed.

The CHAIRMAN. Mr. Garfield, were not the withdrawals in Alaska made in 1906?

Mr. GARFIELD. November, 1906; yes.

The CHAIRMAN. That was before you were Secretary?

Mr. GARFIELD. That was before I was Secretary.

Mr. BRANDEIS. They were made by Secretary Hitchcock?

Mr. GARFIELD. They were; yes.

Mr. BRANDEIS. And this discussion which Senator Root has just referred to between yourself and Secretary Hitchcock took place a year before the discussion before Congress on the Cale and Mondell bills about which you have testified?

Mr. GARFIELD. Yes.

Mr. BRANDEIS. Now, you stated in regard to Secretary Hitchcock that he had spoken of it as being in a bad condition?

Mr. GARFIELD. Yes.

Mr. BRANDEIS. What did you understand him to mean by that—to what did he have reference?

Mr. GARFIELD. He had explained to me in connection with the Alaska and other coal conditions that he felt there was a great deal of fraud in the acquisition of coal lands.

Mr. BRANDEIS. And you therefore approached the whole investigation and treatment of the Alaska coal lands with suspicion as to the validity and bona fides of the transactions.

Mr. GARFIELD. In so far as had been stated to me by Secretary Hitchcock, as I have indicated.

Mr. BRANDEIS. Now, Senator Nelson asked you whether or not it was a fact that whatever suspension of the issuing of this patent, after Glavis's telegram of January 22, in these Cunningham patents had taken place, had taken place on the action of the commissioner or some other official—

The CHAIRMAN. In the General Land Office.

Mr. BRANDEIS. In the General Land Office, and not yourself. And you answered yes.

Mr. GARFIELD. Yes.

Mr. BRANDEIS. Now, is it not true that so far as you can remember that that took place not only without any interposition on your part but without any knowledge on your part in regard to what was done?

Mr. GARFIELD. That is true. I do not recall I had any knowledge of that action. In answer to the question you asked me, this is true, that if the matter had been brought to my attention I certainly should have directed the suspension of any patents.

The CHAIRMAN. So that this action that was taken met with your approval?

Mr. GARFIELD. No; because I knew nothing of it at the time.

The CHAIRMAN. I mean the action of suspension. You approve it now?

Mr. GARFIELD. I approve it now, without doubt.

Mr. BRANDEIS. I will ask you, Mr. Garfield, whether you knew that the Cunningham claims had ever been clear listed?

Mr. GARFIELD. I did not so know.

Mr. JAMES. So that action did not meet with your approval.

Mr. GARFIELD. The action of clear listing would certainly not have met with my approval.

Mr. JAMES. And it does not now?

Mr. GARFIELD. It does not.

Senator FLETCHER. The statement is that Mr. Ballinger suggested to you the advisability of holding up the patents. Do you remember any such suggestion?

Mr. GARFIELD. I do not.

Mr. BRANDEIS. Let me ask you again, Mr. Garfield, was there, under all the circumstances any reason whatsoever why Commissioner Ballinger should have come to you and asked your approval of suspending this clear listing of which you knew nothing?

Mr. GARFIELD. There was no reason whatever for it. It was wholly within his jurisdiction; and, in fact, those matters in the ordinary course of proceeding do not come to the Secretary except upon appeal from the action of the Land Office.

The CHAIRMAN. Now let me ask you again, Mr. Garfield, to read the statement on the top of page 68. You have not given a clear answer to it:

I thereupon immediately called upon Secretary Garfield and advised him of Glavis's communication, as Governor Moore had, as I understood, previously conferred with Secretary Garfield respecting this matter. I suggested to Mr. Garfield the advisability of holding up the patents, in which he concurred.

Now, have you any recollection on the subject?

Mr. GARFIELD. I have no recollection of such a conference.

The CHAIRMAN. You do not know whether it is so or not, then?

Mr. GARFIELD. No; the best of my recollection is I did not have that conference.

The CHAIRMAN. You have no recollection of that conference. That is all your answer amounts to.

Mr. GARFIELD. It is——

Mr. BRANDEIS. He said more than that. He said to the best of his recollection, he had no such conference, is not that so?

Mr. GARFIELD. That is so.

The CHAIRMAN. I understood you to say you had no recollection on the subject.

Mr. GARFIELD. I say, to the best of my recollection, I do not recall any such conference.

Mr. BRANDEIS. Now, Mr. Garfield, when for the first time, so far as you can remember, did the subject of the Cunningham claims as such, as distinguished from the general Alaskan situation, come to your attention?

Mr. GARFIELD. As the matter now rests in my mind from all I can recall, the Cunningham claims were first presented to me, as differentiated from the other Alaskan claims, at the time some officer in the Land Department reported to me the fact that Mr. Glavis had advised him of the discovery of what has been called the Cunningham journal.

Mr. BRANDEIS. Now, that discovery of the Cunningham journal appears, by the undisputed evidence that has gone in here, to have

been made on March 6, which was after Mr. Ballinger ceased to be commissioner.

Mr. GARFIELD. It was.

Mr. BRANDEIS. So that, so far as you can recall, the subject of the Cunningham claims came to your attention after Mr. Ballinger ceased to be commissioner?

Mr. GARFIELD. As I recall it.

Mr. BRANDEIS. Who was it, as near as you can remember, who brought this matter of the Cunningham journal to your attention?

Mr. GARFIELD. It was either Mr. Dennett or Mr. Schwartz; I can not recall just which one.

Mr. BRANDEIS. And that was the original journal that was shown you?

Mr. GARFIELD. It was either the original journal or a certified copy; I do not now recall which.

Mr. BRANDEIS. And that—I think it has already appeared in evidence—came in the latter part of April, 1908?

Mr. GARFIELD. Yes, sir; but I knew that prior to that time, because when the report of Mr. Glavis was first received, then either Mr. Dennett or Mr. Schwartz advised me of that fact.

Mr. BRANDEIS. And it was perhaps some time—

Mr. GARFIELD. Very soon after the 6th of March, it must have been.

Mr. BRANDEIS. After the 6th of march. Well, now, you stated that you did not know until—rather, will you state what date, as near as you can fix it, is the date when you first learned that Mr. Ballinger had, while he was commissioner, drawn the Cale bill?

Mr. GARFIELD. It was in the latter part of 1909—I heard it stated at that time.

Mr. BRANDEIS. And that was after Senate Document No. 248 had been printed?

Mr. GARFIELD. I think it was at or about that time.

Mr. BRANDEIS. It was after the answer of Mr. Ballinger to the President of September 4, 1908, had become public property?

Mr. GARFIELD. Yes, sir.

Mr. BRANDEIS. And the first date that you learned that Secretary Ballinger had made the statement which he did make before the committee on March 3, 1908, favoring the issuing of patents to persons who were not bona fide claimants was—

Mr. GARFIELD. About the same time.

Mr. BRANDEIS. About the same time?

Mr. GARFIELD. Yes, sir.

The CHAIRMAN. The Senate document did not come up until the 6th of January.

Mr. BRANDEIS. He stated that it was when that document was printed, after it had become public.

Mr. GARFIELD. Yes; I think that is correct.

Mr. BRANDEIS. You had seen a copy of it?

The CHAIRMAN. Mr. Brandeis, have you many more questions that you desire to ask? If you have not, we will take a recess.

Mr. BRANDEIS. I have quite a number.

Senator SUTHERLAND. Before we adjourn I want to get into the record, in connection with a colloquy between Mr. Garfield and myself with reference to the character and the right of title which

the entrymen obtained by making final proof, a very brief extract from the case of *Cornelius v. Kessel*; it is just a single paragraph here that appears in the 128th United States report, page 461 [reading]:

By such entry and payment the purchaser secures a vested interest in the property and a right to a patent therefor, and can no more be deprived by such order of any other lawfully acquired property. Any attempted privation in that way of such interests will be corrected whenever the matter is presented so that the judiciary can act upon it.

Mr. PEPPER. Mr. Vertrees, Mr. Finney, and I have agreed that certain papers in this file are the ones which relate to the submission to the Attorney-General, and we will ask that they be put in the record at this point.

The CHAIRMAN. That portion of the files will go in.

(The papers are as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, May 18, 1909.

The ATTORNEY-GENERAL.

SIR: The act of Congress approved June 17, 1902 (32 Stat., 388), commonly known as the "reclamation act," provides in section 1 that all moneys received from the sale of public lands in the States named, excepting 5 per cent thereof set aside by law for other purposes, shall be set aside as a special fund in the Treasury "to be known as the reclamation fund, to be used in the examination and survey for and construction and maintenance of irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the said States and Territories, and for the payment of all other expenses provided for in this act."

The Secretary of the Interior was therein authorized and directed to make examinations and surveys for and to construct irrigation works, and in connection therewith was authorized to withdraw such lands as, in his judgment, were deemed necessary for occupation by irrigation works; also to withdraw the lands to be irrigated from such works, the lands thereafter to be subject to entry under the homestead laws only.

Section 3 of the act provides that upon completion of preliminary surveys in such projects and of the estimates of cost, the Secretary shall determine "whether or not said project is practicable and advisable." Section 4 provides that upon determination by the Secretary "that any irrigation project is practicable, he may cause to be let contracts for the construction of the same in such portions or sections as it may be practicable to construct and complete as parts of the whole project, providing the necessary funds for such portions or sections are available in the reclamation fund."

It is further provided that the charges which are to be assessed upon the lands irrigated are to be determined "with a view of returning to the reclamation fund the estimated cost of the construction of the project."

Section 5 provides for the payment of construction charges to the receiver of the local land office, and provides that all moneys received shall be paid into the reclamation fund.

Section 6 authorizes and directs the Secretary of the Interior to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed under the provisions of the act. It is further provided in said section that when the payments required have been made for the major part of the lands irrigated in any of said projects, the management and operations of such works shall pass to the owners of such lands "to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: *Provided*, That the title to and the management and operation of the reservoirs and works necessary for their protection and reservation shall remain in the Government until otherwise provided by Congress."

Section 9 makes it the duty of the Secretary of the Interior to expend, so far as practicable, the major portion of funds arising from the sale of public lands upon irrigation projects within the State where the sales are made, but authorizes him to temporarily use such funds in any State or Territory named in the act, provided that the excess shall be restored to the fund as soon as practicable, and that the expenditures shall, within each ten-year period after the passage of the act, be equalized, if practicable.

Section 10 of the act authorizes the Secretary of the Interior to perform any acts and make any rules and regulations necessary for carrying the provisions of the law into effect.

Under the provisions of this act numerous withdrawals were made and irrigation works constructed or begun. The receipts from the sales of the public lands and construction charges collectable from completed projects not creating a sufficient fund to carry on and complete the projects initiated, the Secretary of the Interior, by regulations dated February 21, 1908, as amended May 28, 1908, directed that upon determination by the engineer of the Reclamation Service in charge of a reclamation project that certain work is to be done, he should, by contract with the water users or settlers' association, or if there be no such organization, with a representative committee of settlers, whereby it or they were to perform work or furnish materials upon or for such uncompleted divisions of the project as would most effectively expedite the completion of the work and insure the best financial results. In carrying out this arrangement it was provided that the Reclamation Service for and on behalf of the United States and the association, or committee of the settlers, should enter into a contract whereunder the association or settlers were to advertise for competitive bids to secure the work on the project or a portion of the project, to be done at the lowest possible rates, competition to be waived in specific cases. The work so performed was required to be under the direct supervision and approval of the reclamation engineer, and settlements for the work done were to be in the form of certificates which, when approved by the project engineer, should be receivable in reduction of water-right charges levied by the Secretary of the Interior under the reclamation act. Each person performing work or furnishing materials or supplies under such a contract is required to file a stipulation or agreement to the effect that no cash will be paid for such work or materials or supplies, "but in lieu thereof settlements shall be made and accepted by the issuance of certificates setting forth the value thereof, which shall be receivable in reduction of charges on lands in this reclamation project, in accordance with regulations approved by the Secretary of the Interior."

Upon certification by the engineer in charge as to the satisfactory completion of a definite section or portion of the work, or upon delivery or acceptance of supplies and materials, the association or settlers execute, in duplicate, certificates (copies of which are annexed hereto) which in substance are to the effect that work has been done or materials or supplies furnished to the value of \$— upon the ——— project, and that the amount will be credited on installments due or to become due for water rights on lands held or entered under the project and may be credited both upon buildings and operation and maintenance charges. Duplicate certificates are issued and registered in the local office of the Reclamation Service. The regulations further provide for the surrender of these certificates, and upon their being found correct and unaltered and the amount surrendered found to be equal to one or more installments of the water-right charges or operation and maintenance charges, the reclamation engineer accepts the certificate and issues a receipt acknowledging the surrender of the described certificates for work performed and materials delivered. Where the amount of certificate surrendered is not equivalent to a full installment, the balance is required to be paid in cash. The canceled certificates are then forwarded to the Director of the Reclamation Service with recommendation that the water-right charges against the lands of the person surrendering the certificate be reduced by an amount corresponding to the value of the certificate. If found to be correct, the Secretary of the Interior, upon recommendation of the director, gives notice of the reduction of the water-right charges on the lands accordingly and directs the Commissioner of the General Land Office to accept and receive the charges payable on the lands as reduced by the certificates surrendered. A copy of said circular of May 28, 1908, is herewith inclosed, marked "Exhibit A."

It appears from the last reports received from project engineers that cooperation certificates to the value of \$424,606.17 have been issued on seven projects; that certificates to the value of \$159,053.37 have been redeemed, and that certificates to the value of \$265,552.80 are outstanding; that in addition contracts have been executed upon three other reclamation projects, and that cooperation certificates are being prepared for two additional projects. Copies of certificates attached, marked "Exhibit B."

In connection with and directly related to this subject, I have to state that for a number of years the people of Grand Valley, Colo., have been urging the Government to construct a high-line ditch in that valley to irrigate lands above the level of a private ditch now in operation there. The Water Users' Association, purporting to represent the people, finally agreed to secure subscriptions among the people interested to aid the Government in the construction of the project, sufficient funds for that purpose not being available in the reclamation fund. The informal understanding with the people was that upon their cooperation the construction of the project would be taken up immediately. In February, 1909, the Grand Valley Water Users' Association submitted a showing to the effect that subscriptions for cooperative work in constructing this project had been made to it of \$90,000 in money and about \$40,000

in promised work, a total of about \$130,000. The association asked that the Government allot \$125,000 from the moneys in the reclamation fund for use during the year 1909, which, with allotment previously made and the subscription from the association, would make a total available sum of \$350,000. The estimated total cost of the project is \$2,500,000.

Upon consideration of the matter my predecessor, acting for the United States, and the Grand Valley Water Users' Association, on February 20, 1909, entered into a contract, herewith inclosed, marked Exhibit C, which recited that as the United States contemplates the construction of certain irrigation works for the irrigation of such lands as may be found feasible in Grand Valley and the association is desirous of co-operating with the United States, in order that the project may be sooner begun, and has for the purpose secured subscriptions, money, and labor exceeding \$125,000, it was agreed that the association should make available for construction the money and labor so subscribed and the Secretary of the Interior should allot \$125,000 from the reclamation fund, to be used upon said project to an extent equal to the amount of subscriptions made available by the association and money and work. The moneys collected by the association were to be deposited in banks in Colorado, subject to the check of the treasurer of the association when countersigned by the fiscal agent of the Reclamation Service assigned to the project. The association was authorized to give to persons subscribing money for the purpose indicated a receipt or certificate to the effect that the payor or his assignee after the application of the money to the cost of construction would be entitled to receive from the association cooperation certificates to the amount of the moneys paid by him. The association was further authorized to contract for such work and materials as might be requested by the project engineer, and upon completion of the work or furnishing and accepting of the materials the engineer is to submit to the association accounts showing by whom the work was done or materials furnished, and thereafter the project engineer of the Reclamation Service is to register cooperative certificates equal to the total of the accounts and deliver same to the persons who paid in moneys upon calls issued by the association. The agreement provides that these cooperative certificates are not to be redeemed in money by the United States, but will be accepted and applied at their face value in reduction in installments of water-right charges hereafter to accrue against the lands within the project. The agreement further provided that the certificates might be redeemed by the association in cash, secured by assessments against all lands under the project, or with funds derived from its first assessment for the collection of charges announced in the public notice by the Secretary of the Interior.

Section 10 of the agreement provides that only those who are or may become members of the water users' association will be accepted as applicants for rights to use the water under the proposed works, and that no applications for water rights will be accepted by the United States until the secretary of the water users' association certifies that the applicant has subscribed for stock of the association for the lands and paid all assessments levied there against. Under section 1 of the reclamation act the moneys for examination and survey, construction, and maintenance of irrigation works are to be derived from the sale of public lands in the States named, and section 4 specifically provides that when the Secretary of the Interior determines that a project is practicable he may let contracts for construction of such portions or sections as it may be practicable to construct and complete as parts of the whole project, "providing the necessary funds for such portions or sections are available in the reclamation fund." The same section also clearly contemplates the return to that fund of the total estimated cost of construction. There seems to be no provision or permission in the law for the acceptance of contributions or donations from private parties, either in the money, materials, or supplies for labor or for cooperation in this respect between the Government and private individuals or water users' associations in the construction of such projects. In fact the act does not seem to provide for the recognition of such associations until the payments required have been made for the major part of the lands irrigated, at which time section 6 provides that management and operation shall pass to the owners of the lands to be maintained at their expense "under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior."

With reference to the contract of February 26, with the Grand Valley Water Users' Association, it does not appear that prior to the date of this contract the project had been determined to be practicable or that the necessary funds for the construction or completion of any entire portion or section of the project were available in the reclamation fund; in fact, it appears from the contract that such was not the case, for \$90,000 of the amount, that is, the money subscribed by the association, is not in the reclamation fund, but is to be deposited in bank by the association, to form the basis of cooperation certificates to be hereafter issued, the remaining \$35,000 or \$40,000 subscribed by the association is in the form of promised work.

As hereinbefore indicated, section 4 of the act requires that the charges for construction must be determined with a view of returning to the reclamation fund "the estimated cost of the project." This can not be done in this instance, under a contract which recognizes an interest of \$125,000 in the matter on the part of the water users' association. Section 10 of the contract is of doubtful validity, as it seeks to exclude from the benefit of the project all those who do not become members of the water users' association, whereas it would appear that as to the public lands under the project, a bona fide entryman under the public land laws of the United States would be entitled to participate in the benefits of the act, though not a member of the local association.

It should be further noted in connection with this contract that prior to the initiation of the project the Grand Mesas Land, Canal and Power Company had filed on 1,200 second-feet of water from the Grand River, to be used upon irrigable lands on both sides of the river in Grand Valley. About the time of the initiation of the irrigation project by the United States in Grand Valley, my predecessor approved a contract or agreement whereunder the Government abandoned so much of its project as related to Orchard Mesa south of Grand River, so as to permit the construction of a private irrigation ditch through that area, and the construction company having that matter in charge transferred to the United States one-half the stock of the Grand Mesa Land, Canal and Power Company, the purpose of the transfer being to secure the United States against any claim on the part of the Orchard Construction Company, owner of all the stock of the Grand Mesa Company, or the Orchard Mesa irrigation district, to the use of the water of Grand River in excess of the amount needed for their project. It was agreed in the contract relating to Orchard Mesa that if the United States should decide not to construct the Grand Valley project, the stock in question should be returned to the Orchard Construction Company.

The latter company is now before the department offering to construct irrigation works on the north side of the river should the Government abandon the project and the stock above described be returned.

In view of the extent to which the Government has engaged in the construction of works under the cooperation certificate plan, of the possible liabilities in the way of claims thereby incurred, and delay in constructing works through lack of available reclamation funds, I hesitate to question the authority of this department to proceed to the completion of such projects as are actually under way, in accordance with the cooperative scheme; but in view of the apparent lack of authority of law for the action, I am constrained to submit the same to you in order that I may be advised as to what the future action of this department should be in these matters. While the issue of cooperation certificates, as above indicated, has proceeded to a considerable extent and the Grand Valley contract was entered into and ratified by my predecessor, it must be borne in mind that we are but at the outset of the matter of reclaiming the arid lands of the United States; and if mistakes have been made in the construction of the law or if proceedings have been had unwarranted by the law, no more opportune time than the present will ever be found to cease whatever acts are not warranted, or to place matters already acted upon in statu quo so far as may be possible.

I have therefore the honor to ask you to consider these matters and to advise me—

(1) Whether, in view of the provisions of the reclamation act hereinabove set out, expressly providing as to how funds for construction of irrigation works are to be maintained and forbidding the letting of contracts for construction until the necessary funds are available in the reclamation fund, and of the requirement that the charges shall be so assessed as to return the entire estimated cost of construction to that fund, this department has any right to recognize or enter into contracts with voluntary water users' associations or individuals whereunder they shall enter into partnership or cooperate with the United States in the performance of work or furnishing of money, supplies, or materials to be used in the construction of reclamation works under the act of June 17, 1902, *supra*.

(2) If you find that the law does not authorize or permit such cooperation, whether the United States is warranted in honoring and accepting all cooperation certificates already issued on the various projects, or whether the only relief which may be extended to those who have performed labor or furnished moneys, materials, or supplies will lie in an act of Congress authorizing the payment to them of the money value of such labor, supplies, or materials.

(3) As to the Grand Valley contract, in the light of the foregoing questions and in view of the further fact that no work has been done except preliminary surveys, that the subscriptions have not been used by the United States, and the total amount so subscribed, together with the amount apportioned by the United States not being sufficient to complete any portion or section of the project, whether said contract can be legally abrogated by the United States upon condition that it return to the Orchard Construction Company the stock in the Grand Mesa Land, Canal and Power Company.

In connection with the subject I ask to be further advised whether, in view of the provisions of section 1 of the reclamation act, which provides a fund for the construction and maintenance of irrigation works, and of section 6, which provides that the management and operation of the works shall pass to the owners of the lands irrigated to be maintained "at their expense" after construction charges have been paid for the major part of the lands irrigated, whether the United States is warranted under the law in exacting from water-right applicants and entrymen prior to such time annual payments for maintenance and operation of the reservoirs, ditches, and canals in the project wherein the lands lie. The present practice is to fix a definite charge per acre in each project to cover the cost of construction and to assess annually a specific amount per acre for operation and maintenance, collecting the same from the land owners.

In this connection it appears that Congress, in later acts (34 Stat., 53, 325, 1037; 37 Stat., 85, 562) providing for the opening of certain Indian reservations to settlement and entry and extending the operation of the reclamation act to lands therein, provided that the settler should pay a specific amount for the lands, the same to be applied for the benefit of the Indians, which should be in addition "to the charges for construction and maintenance of the irrigation system made payable into the reclamation fund by the provisions of the reclamation act." This language, or the equivalent language used in the three acts mentioned, appears to be descriptive and not in the nature of a legislative construction or modification of the reclamation act of June 17, 1902; but as this is a matter of considerable importance and related to the subject of this communication, I have to request that I be advised as to whether this department has the right to exact the payment of maintenance or operation charges from settlers, entrymen, and private landowners within reclamation projects prior to the time when payments have been made for the major portion of the lands irrigated.

I inclose herewith for your reference copies of circulars of September 9, 1902, and May 27, 1908, also copy of cooperation certificates proposed to be used in connection with the Orland, Salt River, Williston, and Grand Valley Irrigation projects and copy of contract of February 20, 1909, between Secretary Garfield and the Grand Valley Water Users' Association.

Very respectfully,

R. A. BALLINGER,
Secretary.

DEPARTMENT OF JUSTICE,
Washington, May 26, 1909.

THE SECRETARY OF THE INTERIOR.

SIR: I have the honor to acknowledge the receipt of your letter of May 18, instant, in which you request my opinion upon the validity of certain contracts entered into by the Secretary of the Interior with associations of water users claiming the benefits of the act of June 17, 1902 (32 Stat., 388), commonly known as the "reclamation act."

In answering your inquiries it is necessary to inquire whether regulations made by the Secretary were authorized by the statute.

The reclamation act is entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands."

By the first section it is provided that all moneys received from the sale and disposal of public lands in certain named States and Territories (excepting 5 per cent) shall be reserved, set aside, and appropriated as a special fund in the Treasury to be known as the "reclamation fund," to be used in the examination and survey for, and the construction and maintenance of, irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the said States and Territories, and for the payment of all other expenditures under this act.

The second section authorizes the Secretary of the Interior to make examinations and surveys for and "to locate and construct, as herein provided, irrigation works for the storage, diversion, and development of waters."

Section 3 provides that upon completion of preliminary surveys, and of the necessary maps, plans, and estimates of cost, after withdrawal of the public lands required for irrigation works, the Secretary shall determine whether or not said project is practicable and advisable; and that public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry only under the provisions of the homestead laws in tracts of not less than forty nor more than one hundred and eighty acres, and shall be subject to the limitations, charges, terms, and conditions herein provided.

Section 4 is as follows:

"That upon the determination by the Secretary of the Interior that any irrigation project is practicable, he may cause to be let contracts for the construction of the same in such portions or sections as it may be practicable to construct and complete as parts of the whole project, providing the necessary funds for such portions or sections are available in the reclamation fund, and thereupon he shall give public notice of the lands irrigable under such project and limit of area per entry, which limit shall represent the acreage which, in the opinion of the Secretary, may be reasonably required for the support of a family upon the lands in question; also of the charges which shall be made per acre upon the said entries, and upon lands in private ownership which may be irrigated by the waters of the said irrigation project, and the number of annual installments, not exceeding ten, in which such charges shall be paid and the time when such payments shall commence. The said charges shall be determined with a view of returning to the reclamation fund the estimated cost of construction of the project, and shall be apportioned equitably: *Provided*, That in all construction work eight hours shall constitute a day's work, and no Mongolian labor shall be employed thereon."

Section 5 provides that the entryman shall reclaim at least one-half of his irrigable area for agricultural purposes and that the annual installments shall be paid to the receivers of the local land office and that all moneys received shall be paid into the reclamation fund.

By section 6 the Secretary of the Interior is directed to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed under the provisions of the act; and when the payments for the major part of the lands irrigated are made, the management and operation of the works shall pass to the owners of the lands, to be maintained at their expense, under such forms and regulations as may be acceptable to the Secretary of the Interior; but the title to and the management and operation of the reservoirs and works necessary for their protection and preservation shall remain in the Government until otherwise provided by Congress.

Section 7 provides that where it is necessary to acquire any rights or property, the Secretary may acquire them by purchase or condemnation, and may pay from the reclamation fund the sums which may be needed for that purpose.

Section 8 provides that the act shall not be construed as affecting the laws of the State or Territory concerning irrigation, or the right of any State or Territory or water user in interstate streams or the water thereof.

Section 9 requires the Secretary to expend, as far as practicable and subject to the existence of feasible irrigation projects, the major portion of the funds arising from the sale of public lands within each State and Territory for the benefit of arid and semiarid lands therein; but authorizes him to use the funds in any State or Territory named in the act, and requires that the excess shall be restored to the fund as soon as practicable, so that the expenditures shall, in any event, within each ten-year period after the passage of the act be equalized as far as practicable.

The tenth section authorizes the Secretary of the Interior to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of the act into full force and effect.

You state that:

"Under the provisions of this act numerous withdrawals were made and irrigation works constructed or begun. The receipts from the sales of the public lands and construction charges collectible from completed projects not creating a sufficient fund to carry on and complete the projects initiated, the Secretary of the Interior by regulations dated February 21, 1908, as amended May 28, 1908, directed that upon determination by the engineer of the Reclamation Service in charge of a reclamation project that certain work is to be done, he should, by contract with the water users or settlers' association, or if there be no such organization, with a representative committee of settlers, whereby it or they were to perform work or furnish materials upon or for such uncompleted divisions of the project as would most effectively expedite the completion of the work and insure the best financial results. In carrying out this arrangement it was provided that the Reclamation Service for and on behalf of the United States and the association, or committee of the settlers, should enter into a contract whereunder the association or settlers were to advertise for competitive bids to secure the work on the project or a portion of the project, to be done at the lowest possible rates, competition to be waived in specific cases. The work so performed was required to be under the direct supervision and approval of the reclamation engineer, and settlements for the work done were to be in the form of certificates which, when approved by the project engineer, should be receivable in reduction of water-right charges levied by the Secretary of the Interior under the reclamation act. Each person performing work or furnishing materials or supplies under such a contract is required

to file a stipulation or agreement to the effect that no cash will be paid for such work or materials or supplies, 'but in lieu thereof settlements shall be made and accepted by the issuance of certificates setting forth the value thereof, which shall be receivable in reduction of charges on lands in this reclamation project, in accordance with regulations approved by the Secretary of the Interior.'

"Upon certification by the engineer in charge as to the satisfactory completion of a definite section or portion of the work, or upon delivery or acceptance of supplies and materials, the association or settlers execute in duplicate certificates, which in substance are to the effect that work has been done or materials or supplies furnished to the value of \$— upon the — project, and that the amount will be credited on installments due or to become due for water rights on lands held or entered under the project and may be credited both upon building and operation and maintenance charges. Duplicate certificates are issued and registered in the local office of the Reclamation Service. The regulations further provide for the surrender of these certificates and, upon their being found correct and unaltered and the amount surrendered found to be equal to one or more installments of the water-right charges or operation and maintenance charges, the reclamation engineer accepts the certificate and issues a receipt acknowledging the surrender of the described certificates for work performed and materials delivered. Where the amount of certificate surrendered is not equivalent to a full installment, the balance is required to be paid in cash. The canceled certificates are then forwarded to the Director of the Reclamation Service, with recommendation that the water-right charges against the lands of the person surrendering the certificate be reduced by an amount corresponding to the value of the certificate. If found to be correct, the Secretary of the Interior, upon recommendation of the director, gives notice of the reduction of the water-right charges on the lands accordingly, and directs the Commissioner of the General Land Office to accept and receive the charges payable on the lands as reduced by the certificates surrendered."

You further state:

"* * * That for a number of years the people of Grand Valley, Colorado, have been urging the Government to construct a high line ditch in that valley to irrigate lands above the level of a private ditch now in operation there. The water users' association, purporting to represent the people, finally agreed to secure subscription among the people interested to aid the Government in the construction of the project, sufficient funds for that purpose not being available in the reclamation fund. The informal understanding with the people was that upon their cooperation the construction of the project would be taken up immediately. In February, 1909, the Grand Valley Water Users' Association submitted a showing to the effect that subscriptions for cooperative work in constructing this project had been made to it of \$90,000 in money and about \$40,000 in promised work, a total of about \$130,000. The association asked that the Government allot \$125,000 from the money in the reclamation fund for use during the year 1909, which, with allotment previously made and the subscription from the association, would make a total available sum of \$330,000. The estimated total cost of the project is \$2,500,000.

"Upon consideration of the matter my predecessor, acting for the United States and the Grand Valley Water Users' Association, on February 20, 1909, entered into a contract which recited that, as the United States contemplates the construction of certain irrigation works for the irrigation of such lands as may be found feasible in Grand Valley, and the association is desirous of cooperating with the United States, in order that the project may be sooner begun, and has, for the purpose, secured subscriptions, money, and labor exceeding \$125,000, it was agreed that the association should make available for construction the money and labor so subscribed and the Secretary of the Interior should allot \$125,000 from the reclamation fund to be used upon said project to an extent equal to the amount of subscriptions made available by the association in money and work. The moneys collected by the association were to be deposited in banks in Colorado, subject to the check of the treasurer of the association when countersigned by the fiscal agent of the Reclamation Service assigned to the project. The association was authorized to give to persons subscribing money for the purpose indicated a receipt or certificate to the effect that the payor or his assignee after the application of the money to the cost of construction would be entitled to receive from the association cooperation certificates to the amount of the moneys paid by him. The association was further authorized to contract for such work and materials as might be requested by the project engineer, and upon completion of the work or furnishing and accepting of the materials the engineer is to submit to the association accounts showing by whom the work was done or materials furnished, and thereafter the project engineer of the Reclamation Service is to register cooperative certificates equal to the total of the accounts and deliver the

came to the persons who paid in money upon calls issued by the association. The agreement provides that these cooperative certificates are not to be redeemed in money by the United States, but will be accepted and applied at their face value in reduction in installments of water-right charges hereafter to accrue against the lands within the project. The agreement further provided that the certificates might be redeemed by the association in cash, secured by assessments against all lands under the project, or with funds derived from its first assessment for the collection of charges announced in the public notice by the Secretary of the Interior.

"Section 10 of the agreement provides that only those who are or may become members of the water users' association will be accepted as applicants for right to use the water under the proposed works and that no applications for water rights will be accepted by the United States until the secretary of the water users' association certifies that the applicant has subscribed for stock of the association for the lands and paid all assessments levied against said stock."

You further state that—

"* * * Prior to the initiation of the project the Grand Mesa Land, Canal and Power Company had filed on 1,200 second-feet of water from the Grand River, to be used upon irrigable lands on both sides of the river in Grand Valley. About the time of the initiation of the irrigation project by the United States in Grand Valley, my predecessor approved a contract or agreement whereunder the Government abandoned so much of its project as related to Orchard Mesa south of Grand River, so as to permit the construction of a private irrigation ditch through that area, and the construction company having the matter in charge transferred to the United States one-half of the stock of the Grand Mesa Land, Canal and Power Company, the purpose of the transfer being to secure the United States against any claim on the part of the Orchard Construction Company, owner of all the stock of the Grand Mesa Company, or the Orchard Mesa irrigation district, to the use of the water of Grand River in excess of the amount needed for their project. It was agreed in the contract relating to Orchard Mesa that if the United States should decide not to construct the Grand Valley project the stock in question should be returned to the Orchard Construction Company.

"The latter company is now before the department offering to construct irrigation works on the north side of the river should the Government abandon the project and the stock above described be returned."

In view of this statement of facts the first inquiry you make to me is:

"Whether, in view of the provisions of the reclamation act herein above set out, expressly providing as to how funds for construction of irrigation works are to be maintained, and forbidding the letting of contracts for construction until the necessary funds are available in the reclamation fund, and of the requirement that the charges shall be so assessed as to return the entire estimated cost of construction to that fund, this department has any right to recognize or enter into contract with voluntary water users' associations or individuals whereunder they shall enter into partnership or cooperate with the United States in the performance of work or furnishing of money, supplies, or materials to be used in the construction of reclamation works under the act of June 17, 1902, supra."

Looking to the act itself, I find little difficulty in its construction.

The objects of the act are clearly expressed. It appropriates the proceeds of the sale of public lands in certain States and Territories for the construction of irrigation works for the reclamation of arid and semiarid lands. These proceeds constitute a fund known as the "reclamation fund," by the use of which the Secretary of the Interior can develop this project. The whole scheme is based upon and limited in its extent to the proceeds of the sale and disposal of the public lands. No further appropriation by the Government is made or indicated. The plan is in furtherance of the principles of the homestead laws, to improve the character of these undesirable lands for settlers. The Secretary could withdraw from public entry, except from homestead laws, lands susceptible of irrigation, and public lands proposed to be irrigated are subject to entry only under the homestead laws. (Sec. 3.)

The manner of the use of the fund is explicitly stated. When the Secretary of the Interior has determined that a project is practicable, he may cause to be let contracts for construction of such portions or sections as it may be practicable to construct and complete as parts of the whole project, providing the necessary funds for such portions or sections are available in the reclamation fund. This is a plain declaration of the authority conferred upon the Secretary. By the terms of this statute he can not commence any construction of any portion of the work unless the necessary funds are available in the "reclamation fund." There is no ambiguity in these terms. The funds must either be in the "reclamation fund," or definitely provided for, from sales of public lands. To make this more positive the statute further says, after providing for the charges which shall be made upon the lands and the time of their payment,

that these charges shall be determined with a view of returning to the reclamation fund the estimated cost of construction of the project.

The whole intention of the act upon its face is to give to the Secretary of the Interior the power to construct and maintain certain irrigation works by the use of a fund derived as I have stated. He is limited in the exercise of his powers by the law. If the law has defined those powers, he can not act beyond that limit. His acts would be without authority.

In considering an inquiry as to the authority of an officer to bind the Government, the Supreme Court, in the *Floyd Acceptances* (7 Wall. 666, 676), said:

"The answer, which at once suggests itself to one familiar with the structure of our Government, in which all power is delegated, and is defined by law, constitutional or statutory, is that to one or both of these sources we must resort in every instance. We have no officers in this Government, from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority, and while some of these, as the President, the legislature, and the judiciary, exercise powers in some sense left to the more general definitions necessarily incident to fundamental law found in the Constitution, the larger portion of them are the creation of statutory law, with duties and powers prescribed and limited by that law."

These observations are of special force when applied to a series of rules and regulations as in this case. Being intended to be applicable as general rules, where a new and specific authority is given to the officer, all the Secretary can do is to regulate the mode of proceeding to carry out what Congress has enacted. He can not alter or amend the law. (*Morrill v. Jones*, 106 U. S., 466, 467.)

No further extension of his powers is granted by the tenth section, by which he is authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying the provisions of the act into full force and effect. This does not warrant him to import into the act authority to obtain any other means to construct irrigation works than those stated. The act is an appropriation of money obtained in a specific way for a specific purpose. That that purpose can be more fully accomplished in a different way does not confer upon the officer the power to direct that way. That would be to amend the law, which is not the office of a departmental regulation. As was said in *Johnson v. Southern Pacific Company* (117 Fed. Rep., 465):

"While ambiguous terms and doubtful expression may be interpreted to carry out the intention of a legislative body which a statute fairly evidences, a secret intention can not be interpreted into a statute which is plain and unambiguous, and which does not express it. The legal presumption is that the legislative body expressed its intention, that it intended what it expressed, and that it intended nothing more."

These regulations go far beyond the terms of the statute. By providing for another fund and another mode of paying for irrigation work they amend the act. This contract made under them creates a joint action on the part of certain water users with the Government by which they propose to advance certain moneys and perform work in the prosecution of the project. The certificates issued by the association and registered by the engineer are transferable; and, although not redeemed in money by the United States, entitle the holder to a credit for their face value and may be applied in part or full payment of the charges against his lands. By this proposed scheme the money subscribed is not in, nor does it at any time go into, the reclamation fund. There is no security that it will be in that fund or that the work agreed upon will be done, although the government officer furnishes his proportion. In the sixth section of the act it is provided that when the payments are made for the major portion of the lands irrigated, the management shall pass to an organization of the owners. If there had been contemplated any previous combination of water users provision would have been made for it.

I might state other objections to the plan permitted by the regulations, such as the attempted exclusion of all applicants for water rights who are not members of the association; but I deem it unnecessary, because in my opinion the Secretary of the Interior was without authority to enter into contracts of this nature. The regulations under which they are drawn, in my opinion, alter materially the reclamation act, which, as has been said, can not be done by departmental regulation.

Your second inquiry is:

"If you find that the law does not authorize or permit such cooperation, whether the United States is warranted in honoring and accepting all cooperation certificates already issued on the various projects or whether the only relief which may be extended to those who have performed labor or furnished moneys, materials, or supplies will lie in an act of Congress authorizing the payment to them of the money value of such labor, supplies, or materials."

These certificates having been issued under an unwarranted contract can not be received as credits for the charges imposed upon the land under the statute. They

can not be used by the original payee or transferee as a discharge pro tanto of his indebtedness. But they are evidence of work performed, proper and necessary in the construction and maintenance of the irrigation work, done under the supervision and inspection of the Chief Engineer, and certified to be correct, as memoranda for that officer. In this view, I think the work may be paid for as upon a quantum meruit, if there are funds in the reclamation fund. This may cause confusion by reason of the irregularity of the procedure; but, upon familiar principles, would seem to be equitable to the persons furnishing the materials and work. It precludes the recognition of the association as a joint participant in any way. It becomes a transaction between the persons performing the services and the officers of the Government charged with the duty of construction. If the money necessary does not come into the reclamation fund in the manner prescribed in the act, the parties have no remedy except in an application to Congress for an appropriation, or for an amended act providing in the way suggested by the contract or some similar way for credits upon charges on the land.

Your third inquiry is:

"As to the Grand Valley contract, in the light of the foregoing questions and in view of the further fact that no work has been done except preliminary surveys, and that the subscriptions have not been used by the United States, and the total amount so subscribed, together with the amount apportioned by the United States, not being sufficient to complete any portion or section of the project, whether said contract can be legally abrogated by the United States upon condition that it return to the Orchard Construction Company the stock in the Grand Mesa Land, Canal and Power Company."

It seems that the Grand Mesa Company had rights of irrigation, to be used on both sides of Grand River in Grand Valley, prior to the initiation of the government project. An agreement was entered into by the company with the Secretary of the Interior by which the Government abandoned that part of its project which related to the south of Grand River, and permitted the company to construct a private irrigation ditch through that area. The company transferred one-half of its stock to the United States to secure the United States against any claim on the part of the company or its associates for an excessive use of the water of Grand River. If the United States did not proceed with the Grand Valley project the stock was to be returned.

Under this agreement no obligation rested upon the Government to construct the irrigation works in Grand Valley.

The permission in the agreement to construct a private irrigation ditch is immaterial. If that permission was granted in consideration of an agreement by the Government not to proceed with a portion of its project in that area, the agreement was entered into without authority.

Nothing has been done under the government project affecting this portion of lands. Whether, in the event of the prosecution of the Grand Valley project, it might be necessary to acquire the rights of this company does not appear. If it should be, the manner of doing so is stated in the seventh section of the act. I think this would not be affected by a supposed agreement not to operate in the lands south of the Grand River, if it became necessary to acquire rights and property to carry out the provisions of the act. All rights of the company under its incorporation are recognized and protected by the eighth section.

Notwithstanding that the whole contract as presented to me may be regarded as void, manifestly the stock should be returned to the Orchard Construction Company. Joint control and operation is not recognized in any manner in the statute. The return of the stock can not be conditional upon an abandonment by the Government of any part of the proposed project. It simply leaves the parties, the Government, and the company where they were before the signing of this "contract."

You ask:

"* * * To be further advised whether in view of the provisions of section 1 of the reclamation act, which provides a fund for the construction and maintenance of irrigation works, and of section 6, which provides that the management and operation of the works shall pass to the owners of the lands irrigated to be maintained at their expense after construction charges have been paid for the major part of the lands irrigated, whether the United States is warranted under the law in exacting from water-right applicants and entrymen prior to such time annual payments for maintenance and operation of the reservoirs, ditches, and canals in the project wherein the lands lie. The present practice is to fix a definite charge per acre in each project to cover the cost of construction and to assess annually a specific amount per acre for operation and maintenance, collecting the same from the landowners."

I think the practice of the department is correct. The reclamation fund is, among other things, for the construction and maintenance of the irrigation works. It is true that by the fourth section the charges shall be determined with a view to returning the estimated cost of the construction. The act may be fairly construed to include

in the fund charges for maintenance. Especially is this inferable when it is apparent from the language of the sixth section that when the management and operation shall pass to the owners of the irrigated land, the expenses of maintenance are to be paid by them. These expenses are clearly the same as were theretofore paid by the Government out of the reclamation fund. Unless they had been charges upon the land and collectible as such, the fund, which by the theory of the reclamation plan is to be used in constructing other works, would not be kept intact. The present practice of the department prevents the fund from being diminished and leaves it available for the intended purposes.

Referring to several statutes providing for the opening of certain Indian reservations to settlement and entry, and extending the reclamation to land thereon, you request to be advised as to whether your department "has the right to exact the payment of maintenance or operation charges from settlers, entrymen, and private land owners within reclamation projects prior to the time when payments have been made for the major portion of the lands irrigated."

Without reciting the language of those statutes, I think their object, in this respect, was to extend the irrigation provision of the act of June 17, 1902, to the Indian lands.

In some cases the fund is raised, originally, in a different manner from that provided in that act, inasmuch as money is appropriated for the purposes of construction. In others it is obtained in a way similar to that of the general act. But always the costs are paid from the proceeds of the sales of lands; and in the case of advancements the sums advanced are to be thus reimbursed.

I am of opinion the practice referred to by you is also the correct one in the reclamation projects on these Indian reservations. Indeed, it is clearly approved by Congress. Thus, on the Yakima Reservation the Secretary is authorized to cover into the reclamation fund the money of the Indians for payment of charges for construction and maintenance for the water rights appurtenant to the land retained by him, or for the annual maintenance charges payable on account of such water rights after the construction charge thereon has been paid in full. And on the Fort Peck Reservation, where the Secretary of the Interior is authorized to construct irrigation projects, all applicants for water rights may be required to pay such annual charges for operation and maintenance as shall be fixed by the Secretary; and the Secretary is authorized to fix the time for the beginning of such payments and to provide such rules and regulations thereto as he may deem proper. The Indian allottee is not required to contribute to the cost of construction, but his lands must bear their pro rata share of the cost of operation and maintenance, and the Secretary withholds his moneys to pay such charges. (35 Stat., 558.)

The distinction is made between costs of construction and costs of maintenance, but both are recognized as payable from a charge upon the land.

The right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right. It is entirely reasonable that the water user should pay for the use from the time the water is delivered upon the land, which is, as I understand, all that is required of him.

This is made more definite in these Indian acts than it appears in the general act. As I think that the authority of the Secretary of the Interior is ample to determine the "limitations, charges, terms, and conditions provided in the act," and that charges for maintenance, together with the time of their commencement, are the subject of reasonable regulation, as well as charges for construction, in all cases unless otherwise provided, I am of the opinion that the Secretary has the right to exact the payment you refer to.

Very respectfully,

GEO. W. WICKERSHAM,
Attorney-General.

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Washington, D. C., July 24, 1909.

THE SECRETARY OF THE INTERIOR.

SIR: In compliance with the instructions of the department under date of July 20 there is herewith submitted a concrete case arising in connection with the plan of equitable reduction of dues or of cooperation in western Nebraska for the consideration of the Attorney-General, who has intimated his willingness to consider such a case.

The North Platte project, lying in western Nebraska and eastern Wyoming, was planned to include irrigable land on both sides of the North Platte River, involving

the construction of a dam and a main canal on the north side, known as the interstate canal, about 160 miles long, and several canals for the irrigation of lands on the south side of the river. The plans contemplate the completion of portions or sections in systematic order, bringing water to additional tracts each year.

In 1907, 95 miles of the main canal had been built, together with a distributing system for what is known as the first lateral district, for the irrigation of about 37,000 acres.

The plans for the project involved the construction of the distributing system for the second lateral district in the year 1909 and the furnishing of water during 1910.

A large number of farmers had settled upon the lands within the second lateral district some years before. They urged strongly that the work for that district be taken up in 1908 instead of 1909, as planned. The fact that these entrymen were located upon these lands is an unfortunate condition, resulting from the provisions of the reclamation act which permit homestead entries to be made upon these irrigation projects long in advance of the possibility of furnishing water. Accordingly the settlers suffer great hardship in attempting to comply with the homestead laws regarding residence and cultivation during the period of waiting for water.

The representations of these settlers were carefully considered in making allotments of the funds for the year 1908, but it was impracticable to allot funds for such construction in that year.

The reasons for this condition arise from the terms of the act regarding expenditures of the reclamation fund.

Section 4 requires that the Secretary of the Interior, in letting contracts for the construction of such portions or sections of projects as it may be practicable to construct and complete as parts of the whole project, must do so subject to the proviso that "the necessary funds for such portions or sections are available in the reclamation fund."

The Secretary is also required by section 9 to expend the major portion of the funds arising from the sale of public lands within each State and Territory mentioned in the act, within the limits of such State and Territory, subject, however, to the existence of feasible irrigation projects, and also provides that the Secretary may temporarily use such portion of the funds for the benefit of lands in other States or Territories; but at the end of each ten-year period the expenditures must be equalized according to the proportions and subject to the conditions of practicability specified in the section.

The effect of section 9 is to require one or more projects to be constructed in each State or Territory where feasible projects can be found. This has been done in all but one, namely, in Oklahoma, where considerable expenditure has failed to reveal a feasible project. The funds available each year are divided among the several projects so as to secure the most satisfactory returns for the moneys expended, considering the settlers upon the project, the preservation of water-right claims under the state statutes, the proper utilization of the organized field and office forces and equipment, the speedy return of the moneys expended to the fund as contemplated by the act, and the readjustment of the expenditures in the several States and Territories by the end of the ten-year period in 1912.

All these conditions made it impracticable to allot funds to the North Platte project more rapidly than would be consistent with the general scheme laid out for the orderly and systematic adjustments of all the other projects, within the limit of the funds available.

The plans of construction for the year 1908 had been adopted in a broad way several years before, as it has been the practice to make each year's allotment to secure the most effective progress and with some consideration of the amounts estimated to be available in future years. In 1907, when the 1908 allotments were made, one-half of the ten-year period had expired, and the proper readjustment of expenditures in the several States and Territories required by section 9 of the act to be accomplished in the year 1912, so far as practicable, was an important factor in the consideration of future needs.

In the assignment of funds, amounting to \$8,000,000, to be expended in one year, there would have been no actual difficulty in meeting the demands of the settlers on the several projects where cooperation work was afterwards established by setting apart \$300,000 or \$400,000 out of that sum for such work. The difficulties hereinbefore pointed out prevented such a plan, and, moreover, such a procedure would require the disbandment of well-trained field and office forces and idle equipment in the way of surveying instruments and office buildings, animals, wagons, and construction plant of all kinds. This would manifestly have been a wasteful process, and for all these reasons it was not practicable or economical to allot the funds desired by the settlers in the second lateral district of the North Platte project, although there was a balance available to meet all the liabilities.

The impression has grown up from these conditions that there was no money available in the reclamation fund for certain pieces of work. This, of course, is not correct, as the cash available has always been greatly in excess of the obligations, as will be hereafter shown. It lies within the power of the Secretary at all times to curtail the work and not to interfere with contract obligations, changing the allotment of funds from one project to another. The question to be decided in each case is whether such change would be businesslike or economical and whether it would conduce to proper administration.

The request from the settlers in the North Platte project for early construction of the second lateral district became very urgent in the spring of 1907, and at that time suggestions were made by some of the people living upon these lands that if the Government would lay out for them the distributing system and would reduce their charges under the project they would agree to construct this distributing system on condition that appropriate records be kept of the work done by each person who would be entitled to an equitable reduction of the payments on his water-right application.

At that time the service advised these people that the plan presented a number of difficulties and that it would be given careful consideration.

It was appreciated that some arrangements of this kind would be highly conducive to putting into effect the object of the reclamation act. This act before passage had been fully discussed in almost daily sessions at a series of conferences of Senators and Representatives, constituting what was then known as "the committee of seventeen," during the period from December 3 to December 28, 1901. At that time, and subsequently in the speeches in Congress, was outlined the conception that if the Government would build the reservoirs and main ditches the settlers would do the rest. This idea has remained in the minds of the Members of Congress, and it has been held by them and by the western lawyers that under the authority conferred by the act, purposely made broad to cover such conditions, the department should put into effect some plan by which the settlers could do a portion of the work and reduce the cost accordingly.

Such emphasis was put upon this matter by public men and by the settlers that there appeared to be no alternative other than developing a plan which would permit the man then on the ground to build a portion of the work.

The situation from the standpoint of the would-be water user on the North Platte project was distressing, and, as pointed out many times, the object of the act was apparently being defeated through failure of the department to appreciate the true conditions. Here were many settlers permitted to make homestead entries and required to live upon them, but who could not utilize the lands because of lack of water. At the same time the lands were held subject to charge for water, the main structures having been completed and the lands increased in value and benefited to this extent, but still not capable of supporting a family because of missing links in the shape of smaller ditches.

The great investment already made by the Government could not be returned to the fund as contemplated by law until a piece of ditch could be built, and there seemed no proper reason for refusing to permit the finishing of this work by a man, or association of men, who at the time were debtors to the Government. The conditions on the North Platte project were not unique, and during the summer and fall of 1907 similar importunities were made by citizens resident on several other projects, notably in Nevada and Idaho.

The Payette-Boise Water Users' Association during the fall of 1907 prepared a draft of regulations and a plan of cooperative work which was submitted to the Washington officials. After consideration a number of modifications were made in order to conform as closely as possible to the requirements of the General Land Office and of the Treasury Department.

This draft of regulations was then considered at a meeting of the principal engineers of the Reclamation Service at Yuma, Ariz., in February, 1908, and received their indorsement.

The draft was then put in the usual form of regulations and submitted to the Secretary of the Interior.

The regulations were considered in a conference with the Secretary at which were present the Commissioner of the General Land Office with assistants from his office and the Director of the Reclamation Service with members of the service. A number of objections to the plan were discussed and modifications were made in order to secure a procedure satisfactory to the Land Office. The regulations were approved February 21, 1908, and immediately put into effect.

After several months the matter was discussed by various western Senators, with the result that a hearing was held by the Senate Committee on Irrigation and Reclamation of Arid Lands May 18, 1908. The hearing was printed in Senate Document 507, Sixtieth Congress, first session, copy of which is herewith transmitted. The views

expressed by members of the committee caused several amendments to be made in the regulations which were reissued and approved May 28, 1908, copy herewith.

At the same time there was issued a pamphlet entitled "Cooperative Certificates—Issue and Use by Associations of Settlers or Water Users and Regulations of May 28, 1908," copy herewith, which discussed fully a number of the questions that had been presented to the Senate committee.

The cooperative certificates, of which a sample is inclosed, were issued in pursuance of a contract following the specific form outlined in the regulations. Copy of the contract with the North Platte Water Users' Association is also inclosed.

The certificates so issued represent the value of work done or materials furnished in connection with the construction of the distribution system, and in surrendering the certificates each person, in accordance with the regulations and article 6 of the contract, transfers any right or interest he may have in the work performed, and in return therefor received a reduction of the water right charges which are due from him to the United States on account of a certain definite tract of land. This reduction becomes a set-off against the amount which he owes the United States on account of this charge on the land.

In laying out and constructing irrigation works under the provisions of the reclamation act the Secretary of the Interior may build a reservoir for storing water and make appropriate arrangements with the water users to utilize this water supply through their own ditches. In such a case the reclamation project would consist solely of the reservoir, and the settlers would at their own expense provide the main canal and distributing system, paying only the cost of the reservoir.

The Secretary may in other cases go a step farther, and in addition to the reservoir build a main canal connecting with distributing systems already on the ground, which were each originally connected with the river. A connection with one main canal would involve great economy in operation and great saving of water losses which would otherwise occur in the small ditches. In such a project the settlers would pay the cost of the reservoir and main canal.

The project may consist of a reservoir, a main canal, and small main laterals, leaving to the water users the construction of the minor laterals and small distributaries; or the project may consist of a complete system, consisting of the reservoir, main canal, main laterals, and distributing ditches carrying the water to the individual farms.

In the latter case the settler pays the Government for a complete irrigation system and furnishes no part of the work. In the other cases the settler pays the Government for varying parts of the system, supplying the remainder at his own expense. The several projects of the Reclamation Service present many variations of this plan. In fact, the same project, by reason of irrigation systems constructed over part of the area before the Government began work, presents varying conditions and different parts of the system will be chargeable against different sections, equitable reductions being made for the portion of the system supplied by the settlers.

A complete system for carrying water to each individual farm was planned and built for the first lateral district of the North Platte project, and on July 29, 1907, the Secretary of the Interior issued his public notice under provision of section 4 of the reclamation act, fixing the charge of \$35 per acre of irrigable land for the building of the irrigation system, and 40 cents per acre per annum for operation and maintenance. (Copy herewith.)

It was intended in the year 1909 to build the system for the second lateral district by a cash expenditure from the reclamation fund, the charge for building the works being held at \$35 per acre.

Instead of waiting until the service should take up this second lateral district in regular order, the people undertook the building of their distributing system for themselves in order to save an average of several dollars per acre on the total charge of \$35 per acre.

The North Platte Valley Water Users' Association thereupon entered into a contract with the United States, following the form found in the circular in the regulations of February 21, 1908. This contract, except for the description of the work and the specifications, is the same as all other contracts for cooperative work which have heretofore been executed, except the contract for the Grand Valley project.

By this contract the North Platte Valley Water Users' Association agreed that the work designated by the Reclamation Service should be performed under a maximum fixed in the contract. The work supervised by the engineers of the Reclamation Service and all work constructed was to become the property of the United States, subject to the provisions of the regulations.

As the work was performed, the engineers of the Reclamation Service checked the amounts and the records of the association to insure the proper issue of certificates, and the association issued certificates indicating the value of the labor performed or materials furnished.

The water users performing the work on this lateral system received certificates representing the value of the work and in a large majority of cases have already turned in these certificates as a reduction of the charges due on their water-right applications.

When the water user desires to turn in these certificates he presents them to the fiscal agent of the Reclamation Service, who gives him an appropriate receipt for the certificates. The engineer in charge then makes a statement of the charges due on the specific tract designated in the water user's application for water right and indicates the reduction on account of the surrendered certificates, recommending that an equitable apportionment of the charges assessed against the lands be declared in accordance with the balance stated.

The Director of the Reclamation Service thereupon recommends that the charges against the land described in the specific water-right application be reduced to the amount recommended by the engineer and that said amount be declared an equitable apportionment of the charges. Pursuant to this, the Secretary of the Interior issues a public notice, declaring the specific amount reported to him to be an equitable apportionment of the water-right charges due for the installment or portions of the installment for the lands described in the application, with a view of returning to the reclamation fund the estimated cost of construction. The Commissioner of the General Land Office then notifies the receiver of the local land office of this public notice and directs him to receipt for the cash paid in pursuance of the statement as the full amount of the water-right charges for the stated installment or portions of installment.

This equitable apportionment of the charges is made in pursuance of the provisions of section 4 of the reclamation act, which provides that the Secretary of the Interior shall fix the charges to be paid under each project: "The said charges shall be determined with a view of returning to the reclamation fund the estimated cost of construction of the project, and shall be apportioned equitably. * * *"

The effect of this operation is that a man who desires to pay the operation and maintenance charge which is required at the beginning of the irrigation season having 80 acres owes \$32. He presents himself at the office of the Reclamation Service with \$30 in certificates and \$2 in cash and asks that the amount of his obligation to the United States for operation and maintenance for the current year be reduced to \$2 in view of the fact that by reason of his work it has cost the United States \$30 less for completing the second lateral district, and that accordingly the United States could not justly charge against the water users the full building charge of \$35 per acre and annual operation and maintenance charge for the entire district, but should make a reduction from the total charges collected from the district of \$30 on account of the work that he has done.

A similar reduction would be made on account of the work done by his neighbor, and so on indefinitely, each man who has contributed to reducing the cost of this district receiving corresponding reduction in the charges due from him to the United States.

Various phases of this matter are discussed in the pamphlet entitled "Cooperative Certificates," notably beginning on page 5. Attention is invited to the statement of conditions on the following pages, 6 and 7.

There is also submitted herewith for consideration a manuscript entitled, "Discussion of the legality of the policy and methods involved in the plan for cooperative construction of reclamation projects by the settlers thereon." This dwells particularly on the fiscal side of the matter and shows that there was in the reclamation fund at the time of the execution of the agreement of March 3, 1908, and at all times subsequent, an amount largely in excess of all possible liabilities (p. 63 of the manuscript). Much of this balance has been allowed to accumulate to meet all possible contingencies and to enable the systematic development of the various projects in accordance with the requirements of law and of the physical conditions to be met.

There is also transmitted a sample of a certificate of the North Platte Valley Water Users' Association, together with a form (7-458) reporting the cancellation of the certificates, this being:

First. A statement by the engineer as to the surrender of certificates and recommendation that the water-right charges be reduced on a certain tract of land.

Second. A recommendation of the Director of the Reclamation Service to the Secretary that a certain amount be declared an equitable apportionment of the charges.

Third. Public notice by the Secretary, declaring the amount recommended to be an equitable apportionment.

Fourth. Instructions by the Commissioner of the General Land Office to the receiver of public moneys to accept the amount stated.

This simple method of handling the matter avoids a large expenditure on the part of the Government, following in this respect the established usage of the country.

Very respectfully,

F. H. NEWELL, *Director.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Washington, D. C., July 31, 1909.

The SECRETARY OF THE INTERIOR.

SIR: Departmental letter of July 20, directed this office to submit for consideration of the Attorney-General a concrete case arising in connection with the plan of cooperation in western Nebraska. The Attorney-General has intimated his willingness to consider such a case, which in departmental letter of the same date to the President is stated to be understood as a motion for review of the opinion of the Attorney-General.

The contract considered by the Attorney-General, namely, that made with the Grand Valley Water Users' Association, is entirely different from the cooperative contracts made with other water users' associations. The Grand Valley contract was, in fact, preliminary to a further contract which would have been made on the ordinary cooperative contract form.

The Grand Valley contract provided that the Grand Valley Water Users' Association would furnish \$125,000 in money and labor to be expended on the basis of the usual cooperation contract.

One of the principal objections found by the Attorney-General to this contract was the fact, that the money furnished by the Grand Valley Water Users' Association provided another fund for the reclamation work, that the money subscribed is not in, nor does it go into the reclamation fund, and that there is no security that it will be in that fund or that the work agreed upon will be done. This feature is entirely absent from the ordinary cooperative contract, because the associations advance no money whatever to the Government in such cases.

The cooperative contract for the North Platte project involved the work of constructing a distributing system connected with the main canal in order that water might be furnished to settlers on the area covered in what is known as the "second lateral district" in 1909 instead of 1910 as had been planned.

The project is a very extensive one, involving the ultimate irrigation of nearly 300,000 acres of irrigable land. The project has been divided into sections, known as "lateral districts," which can be completed as parts of the whole project under the authority of section 4 of the reclamation act.

The first lateral district was completed in 1907 and the main supply system for the second lateral district was planned to be constructed in 1908; the distributing system to be constructed in 1909, and the water to be furnished in 1910.

The moneys available in the reclamation fund had been divided among the 30 projects in the several States and Territories according to a definite plan of operations from year to year and with a view of meeting the requirements of section 9 of the reclamation act, regarding the distribution of expenditures among the States and Territories.

Plans had been made to reach this equalization in 1912, so that the construction of the second lateral district in 1908 would have interfered with the entire adjustment. The Secretary could have made funds available by the postponement of work on other projects and could have allotted funds for the work on the second lateral district in 1908; the result would have been the disbandment of trained forces and the idleness of expensive plant and equipment on other projects.

The cooperative plan consists in the United States making a contract with the Water Users Association by which the association agrees to perform certain work within certain maximum prices, the work to become the property of the United States upon acceptance. Payment is made by the association in certificates of work performed, which are to be accepted by the United States in reduction of charges against particular tracts, as an equitable apportionment thereof. (Sec. 4.)

Transmitted herewith is a letter signed by the director under date of July 24, in which the facts and conditions are set out in detail and full explanations made of the administrative features. Said letter is accompanied by exhibits showing the regulations and the procedure and also an exhibit discussing some of the fiscal and legal features.

Very respectfully,

MORRIS BIEN, Acting Director.

DEPARTMENT OF THE INTERIOR,
Washington, August 20, 1909.

MY DEAR MR. ATTORNEY-GENERAL: As you know, Senator Burkett, of Nebraska, has complained somewhat of your construction of the "cooperative certificate plan of the Reclamation Service," embodied in your opinion of May 26, 1909.

On the 20th of July the President sent Senator Burkett's letter to this department. I inclose a copy of my letter to the President, dated July 20, 1909.

The Senator's letter was then transmitted directly to the Secretary at Seattle, Wash. I herewith inclose you a copy of the Secretary's letter to the President, dated July 26.

We have submitted to-day to your office a statement of facts covering the North Platte project in Nebraska, in pursuance of Senator Burkett's desire. The department would esteem it a very great favor if you could take this matter up at an early date and submit to us such further or additional opinion as you think the facts warrant. You will note that I stated in my letter to the President that you would probably treat this new statement of facts as a motion to review your opinion and give the matter further study and investigation.

Permit me, my dear sir, to convey to you the confidence and respect which this department has in you.

Very sincerely, yours,

FRANK PIERCE,
Acting Secretary.

HON. GEORGE W. WICKERSHAM,
Attorney-General, 44 West Forty-fourth street, New York City.

DEPARTMENT OF THE INTERIOR,
Washington, August 21, 1909.

The honorable the ATTORNEY-GENERAL.

SIR: There has been prepared and is submitted herewith a new statement of facts covering the cooperative plan of the Reclamation Service with special reference to the situation on the North Platte project in Nebraska in pursuance of Senator Burkett's desire to have the Attorney-General give further consideration to the matter.

The papers in question consist of "Statement of facts relative to North Platte reclamation project and proposed contract with the North Platte Water Users' Association," dated August 5, 1909, and the several exhibits therein specifically listed.

Very respectfully,

FRANK PIERCE, *Acting Secretary.*

STATEMENT OF FACTS RELATIVE TO NORTH PLATTE RECLAMATION PROJECT AND PROPOSED CONTRACT WITH THE NORTH PLATTE WATER USERS' ASSOCIATION.

AUGUST 5, 1909.

Pursuant to the provisions of the reclamation act, approved June 17, 1902 (32 Stat., 388), the Secretary of the Interior has located and established the North Platte project, which as planned involves the ultimate irrigation and reclamation of nearly 300,000 acres of land, map thereof being hereto attached and marked "Exhibit A."

In accordance with the provisions of section 4 of said act, the territory within the project has been divided into "such portions or sections as it may be practicable to construct or complete as parts of the whole project," each section being designated "lateral district," the first of which (lateral district No. 1) was completed by the Government.

With reference to lateral district No. 2, numerous requests were received for its construction, with which the Government found it impracticable to comply, for reasons which follow:

There were (and still are) 30 projects in process of construction and development; in the administration of the reclamation act, the Secretary of the Interior is required to lay out plans for construction and to determine, in advance, the amount of money available for each project—in other words, to apportion to each project the amount to be expended thereon during a given period—such apportionment being made with a view to complying with the provisions of section 9 of the act, requiring the Secretary, so far as practicable, to expend the major portion of the funds arising from the sale of public lands within each State and Territory named within the limits of such State, and to restore as soon as practicable any funds expended in any State or Territory in excess of such requirement. Under the distribution and apportionment at the time in effect no funds were available for the construction of said second lateral district and could not be made available without changing the entire programme for the then present and future work, upon which the apportionment of funds had been made. Such change would have interfered with work on other projects and was deemed inadvisable and inexpedient.

To accomplish the construction of the works required for the second lateral district in the North Platte project, other than concrete structures and the supplying of

certain materials, without using moneys in the reclamation fund, the Government entered into a contract with a local corporation known as North Platte Valley Water Users' Association, in the form hereto attached, marked "Exhibit B," by the terms of which (art. 4) the association agreed to pay for the work done in "certificates of approved form," which "shall be receivable in payments on water-right charges levied by the Secretary of the Interior, as provided by the departmental regulations."

The services called for by said contract were performed by the association and certificates to the amount of \$35,199.86 issued, of which over \$21,000 is outstanding. The Government supplied, through the reclamation fund, concrete structures and certain materials used, such as reinforcing steel, lumber, etc.

(Form of certificate is hereto attached, marked "Exhibit C," and said regulations, dated, respectively, February 21 and May 28, 1908, are also attached, marked, respectively, "D" and "E." A general circular of the latter date is also attached, marked "F.")

Section 5 of the act provides that annual installments due from persons within the area of the project shall be paid to the receiver of the local land office; to meet this requirement the installment due from any person presenting a certificate in the form of Exhibit C has been remitted or reduced by deducting from the amount thereof the sum recited in such certificate, such deduction being accomplished by means of a process called "equitable apportionment of charges," consisting of a document signed by the Reclamation Service officers, a public order signed by the Secretary fixing the amount of the installment at the balance remaining after such deduction, and a direction by the Commissioner of the General Land Office to the receiver of the local land office to accept said sum as the full installment due.

(Form of the document containing all of the last-mentioned matters is marked "Exhibit G.")

It will be observed that this plan did not involve the advancement of any money by any person, as was the case in the Grand Valley matter recently considered by the Attorney-General. The Reclamation Service deems this circumstance of importance, and differentiates the proposed North Platte plan from the one heretofore considered.

The matter is submitted for the purpose of ascertaining whether there is such a difference, and whether, in the opinion of the Attorney-General, the views announced in his communication to the Secretary of the Interior of May 26, 1909, control the proposed arrangement and prevent its consumation as being in contravention of the law.

For the information of the Attorney-General the following papers are submitted herewith:

1. Argument from the Director of the Reclamation Service in the form of letters to the Secretary of the Interior dated July 24 and 31, 1909.
2. Discussion prepared by the Reclamation Service of your opinion of May 26.
3. Senate Document, Sixtieth Congress, first session, No. 507, setting forth hearings before the Committee on Irrigation on May 18, 1908, upon the issue of certificates by water users' associations; and
4. Public notices and regulations concerning the North Platte project.

In the first lateral district the lands entered or subject to entry under the reclamation act amount to 25,605 acres, and in the second lateral district 17,023 acres.

DEPARTMENT OF JUSTICE,
Washington, September 8, 1909.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I am in receipt of your letter of the 21st ultimo, transmitting to me a statement of facts covering the cooperative plan of the Reclamation Service with special reference to the so-called North Platte project in Nebraska, which, it is suggested, so differs from the Grand Valley Water Users' Association plan, which was referred to in my opinion rendered to you under date of May 26, 1909, as to call for a different conclusion. The Acting Director of the Reclamation Service, Mr. Morris Bien, in his communication to you dated July 31, 1909, referring to the Grand Valley contract, says:

"One of the principal objections found by the Attorney-General to this contract was the fact that the money furnished by the Grand Valley Water Users' Association provided another fund for the reclamation work; that the money subscribed is not in, nor does it go into, the reclamation fund, and that there is no security that it will be in that fund or that the work agreed upon will be done. This feature is entirely absent from the ordinary cooperative contract, because the associations advance no money whatever to the Government in such cases."

This paragraph evidences a misapprehension of the objection to the proposed contract which was before me. That objection was not that the moneys subscribed by the water users' association was not in the reclamation fund, but that the reclamation

fund by the statute was created from the proceeds of the sale of government lands, there was no provision for augmenting it by private enterprise, and that the power of the Secretary of the Interior to let contracts for reclamation projects was, under the law, specifically restricted to the extent of contracting for expenditures not exceeding the amount of moneys available in the reclamation fund as constituted by law. But the plan now submitted for consideration is described in the letter of the acting director as follows:

"The cooperative plan consists in the United States making a contract with the water users' association by which the association agrees to perform certain work within certain maximum prices, the work to become the property of the United States upon acceptance. Payment is made by the association in certificates of work performed, which are to be accepted by the United States in reduction of charges against particular tracts, as an equitable apportionment thereof."

The question which therefore at once arises is by what authority any one assumes to make this particular form of contract in the name of the United States.

Section 3732 of the Revised Statutes enacts as follows:

"No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year."

This act has been several times construed in the opinions of the Attorneys-General. Thus, Attorney-General Clifford (4 Op., 600) says:

"The prohibition is too explicit and comprehensive to be overcome by any rule of construction known to the law. Whenever Congress has intended a departure from the statutory rule mentioned in the act of 1820, the authority to contract, it would seem, has been conferred by express words."

Attorney-General Devens (15 Op., 235, 240) says:

"In order that a contract should be authorized by law, it must appear either that express authority was given to make such contract, or that it was necessarily to be inferred from some duty imposed upon, or from some authority given to, the person assuming to contract on behalf of the United States."

And Acting Attorney-General Taft (19 Op., 650, 654) says:

"The first clause of section 3732 applies to direct authority to contract granted by statute; the second clause covers an implied authority arising out of the appropriation of means to fulfill. The two sections cited are held to be construed together. If public moneys are involved, an appropriation may give power to contract. If public moneys are not involved, the department is prohibited from making the contract 'unless authorized by law.'"

As was pointed out in the previous opinion, the Secretary of the Interior by the act of 1902 is given express authority to let contracts for the construction of reclamation works only "provided the necessary funds * * * are available in the reclamation fund." If they are, then the authority of the Secretary to enter into a contract involving expenditures not exceeding the funds so available, under the terms of the act, is express. If the necessary funds are not available in the reclamation fund, no such authority exists.

I can see no difference whatever between the principles governing the contract in the North Platte project and those which were applicable to the Grand Valley contract, except perhaps that in the North Platte project, the matter is worked out more in detail. In the North Platte project as in the Grand Valley, cooperation between the United States and the private association of water users was brought about by contract, under which the water-users' association undertook to do a portion of the work of completing a reclamation project, receiving certificates to the value of the work so done by them, which certificates are to be accepted in payment by the Government on account of the actual periodical payments required by the act to be made by those who enter upon the lands so reclaimed. These certificates are described by the Director of the Reclamation Service to represent "the value of work done or materials furnished in connection with the construction of the distribution system, and in surrendering the certificates each person, in accordance with the regulations and article 6 of the contract, transfers any right or interest he may have in the work performed and in return therefor receives a reduction of the water-right charges which are due from him to the United States on account of a certain definite tract of land. This reduction becomes a set-off against the amount which he owes the United States on account of this charge on the land."

I find no authority whatever under any statute for any officer to permit such a reduction as a set-off against an amount due to the United States on account of the charges referred to. While it may well be that the reasons for embarking upon such

a cooperative scheme, which are set forth by the director in his communication, would appeal to the legislative branch of the Government, they can not, in my opinion, operate to extend the statutory authority of the head of the department to make contracts for which "the necessary funds" are not available in the "reclamation fund" as constituted by the act of Congress.

Respectfully, yours,

GEO. W. WICKERSHAM,
Attorney-General.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
Washington, November 11, 1909.

The Honorable the SECRETARY OF THE INTERIOR.

SIR: You request my decision of the questions stated in your letter of October 18, 1909, under the facts appearing therein as follows:

"With a view of ascertaining the proper procedure to be followed in carrying out the Attorney-General's suggestion that cash payments be made for unsettled balance of the work and materials secured by the Reclamation Service under what is known as the 'cooperative plan' of construction, advance decisions by the Comptroller of the Treasury are desired upon certain questions involved in the proposition. There are accordingly submitted herewith:

"1. Copy of contract dated April 25, 1906, with North Platte Valley Water Users' Association as to certain general matters connected with the construction of the North Platte project.

"2 (a, b, and c). Copies of the public notices on the North Platte project issued under section 4 of the reclamation act of June 17, 1902 (32 Stat., 388).

"3 (a and b). Copies of the forms of water-right applications for use on public and private lands.

"4. Copy of contract dated March 3, 1908, with said association providing for certain construction under the 'cooperative plan' on the North Platte project.

"5 (a and b). Copies of the Attorney-General's opinions of May 28 and September 8, 1909, by which it is held that there was no authority for the negotiations of the cooperative contract of March 3, 1908, and similar agreements.

"The North Platte case involves every condition that obtains on any project and was the case under special consideration resulting in the Attorney-General's opinion of September 8, 1909.

"There are three parties or groups interested in the subject-matter, viz, the United States, the Water Users' Association, and the settlers or water users who will be referred to herein as water-right applicants. Under the public notices, and water-right applications filed thereunder, contractual relations exist between the United States and the water-right applicants, including an agreement to pay certain charges assessed against their lands, which are referred to herein as water-right charges. Under the contract of April 25, 1906, contractual relations exist between the United States and the association, and paragraph 5 provides that this relation shall include a guaranty by the association for the payment to the United States of the water-right charges assessed against the lands of its members (water-right applicants). In addition to these relations, the cooperative agreement of March 3, 1908, attempted to establish other contractual relations between the United States and the association, whereby the latter undertook to furnish certain necessary work and materials in consideration of securing therefor an equitable apportionment under the provisions of section 4 of the reclamation act for the value received by the United States, by a pro tanto reduction of the water-right charges assessed its members, and guaranteed by it.

"The association then advertised for and received proposals for the execution of certain construction work, and under the supervision of the service, let contracts therefor, largely with persons who were water-right applicants. In making their proposals, executing their contracts, and receiving their settlements, these applicants dealt with the officers of the association. In performing the work they received directions as to locality, quantity, and quality of work to be done from the engineers of the service.

"The present situation is as follows:

"Conformable to the terms of the cooperation agreement, the association has furnished work and material at agreed prices to a total value of \$33,773.84, and for this the service has registered cooperation certificates issued by the association in an equal amount, agreeing thereby to accept these certificates when presented by water-right applicants in pro tanto reduction of the water-right charges assessed against their lands for the costs of building and of operation and maintenance.

"These certificates, after registration, were returned to the association for delivery to the persons who performed the work and furnished the material.

"Of the total registered issue of \$33,773.84, certificates amounting to \$12,320.48 had been presented to and accepted by the project engineer prior to September 11, 1909, the date when telegraphic notice of the opinion of September 8, 1909, was received in the project office with orders to cease accepting certificates. The certificates so accepted were thereupon applied in reduction of water-right charges in accordance with the terms of the agreement. There are now outstanding, in the hands of private holders, certificates amounting to \$21,453.36, which sum represents the agreed value to the service for the work secured by it for which a final settlement by application in reduction of charges has not yet been made.

"The service does not know by whom these certificates are now held, but they may be, and probably are, in the hands of (a) water-right applicants who performed the work represented by their certificates; (b) water-right applicants who have purchased certificates for work performed by other persons; and (c) persons, not water-right applicants, who hold certificates for work performed by themselves or others from whom they have been purchased. Under the agreement these certificates would have been receivable by the United States only from water-right applicants.

"The particular work represented by any particular certificate for fifty or ten dollars, or some less amount, can not usually be determined from the service records, but the total monthly work for which a monthly issue of certificates was registered can be fully shown. Moreover, the association's records, which, according to article 5 of the agreement of March 3, 1908, are open to the service, show by whom the work and material was supplied, and also what certificates were delivered to each person in temporary settlement therefor.

"The Attorney-General having held that cooperative agreements such as that of March 3, 1908, were unwarranted, and that the outstanding certificates should not be received and applied pro tanto in equitable apportionment of water-right charges, it is necessary to find some means of making settlement for the work secured by the service, and of coincidentally retiring and canceling the outstanding certificates representing such work. That the proper claimant is entitled to a settlement for the value of the work and material furnished, and that the agreement of March 3, 1908, and the supplementary agreements and certificates issued thereunder, though unwarranted, are admissible evidence as to such value seems clear.

"Where a parol agreement (of such a nature as to be held void) has been wholly or partially executed and performed on one side, the party performing will be entitled to recover such value as upon an implied contract for a quantum meruit and 'This value, in the absence of any other evidence on the subject, may be fairly assumed at what was stipulated for in the parol contract.' *Clark v. United States* (95 U. S., 539).

"There are sufficient moneys in the reclamation fund from which cash payments can be made, and therefore, in order to determine to whom such payments can or should be made, decisions are desired upon the following questions:

"First. Can cash payments be made to those water-right applicants who hold certificates representing work furnished by them under their contracts with the association, they also being indebted to the United States for water-right charges?

"Second. Can cash payments be made to those water-right applicants who hold certificates representing work furnished by other persons under contract with the association, such applicants also being indebted to the United States for water-right charges?

"Third. Can cash payments be made to those persons not water-right applicants who hold certificates representing work furnished either by themselves or others under contract with the association?

"Fourth. (a) Can cash payments be made to the North Platte Valley Water Users' Association for the value of all unsettled-for work as evidenced by the outstanding certificates, the association also being a guarantor of all water-right charges due to the United States from the water-right applicants? and (b) if so, does any duty devolve upon the service to insure that proper payments are made by the association to the persons who actually performed the work, or to the persons now holding the certificates?

"The foregoing questions are all asked with the understanding that any cash payments or other settlements would be made only upon the surrender and cancellation of the outstanding cooperation certificates representing the work, for, even though the certificates were registered under a void contract, such cancellation seems desirable to certainly extinguish all claims upon the United States.

Fifth. Assuming that affirmative answers will be given to all or some of the foregoing four questions, will the presentation of uncanceled cooperation certificates, which are known to have been properly issued and registered, and which have not previously been redeemed, be sufficient evidence of a right in the holder to receive

payment from the United States of the amount represented thereby? It has been pointed out herein that, while the entire work furnished by the association can be stated accurately from service records, the work supplied for the association by its several members can not be ascertained except by the use of the records of the association.

"Supplementing the foregoing statement of facts from which we have endeavored to eliminate all argument, it may be useful to add the position heretofore taken as to the settlements under these cooperative agreements.

"Assignment of claims against the United States is prohibited by section 3477, Revised Statutes, but it was considered that the claim in favor of the association for the work secured was settled directly with the association by the reduction of water-right charges assessed against the lands of members of the association, for which charges the association was a guarantor.

"The set-off of a debt due to the United States against one due by it was considered to be not only a practicable method of settlement, but one recognized as both proper and desirable for every officer to employ in such cases. As to the legality of such procedure, see 8 Comp. Dec., 26; 12 id., 180; McKnight v. U. S. (13 Ct. Cls., 306); Bonafon v. U. S. (14 Ct. Cls., 489); Gratiot v. U. S. (15 Pet., 370). As to the desirability of such procedure by administrative officers, see 7 Comp. Dec., 218, and 12 id., 180."

The contract submitted as a sample, under which the work for which it is proposed to make payments was performed, was made by Andrew Weiss, project engineer, United States Reclamation Service, for and on behalf of the United States of America, with the North Platte Valley Water Users' Association, a corporation, on March 3, 1908, and provided that:

"The maximum unit prices to be paid by the association for the North Platte project, Nebraska, shall be as follows:

Excavation.

Class 1.....	per cubic yard..	\$0. 15
Class 2.....	do.....	.60
Class 3.....	do.....	.75
Class 4.....	do.....	1. 00
Concrete.....	do.....	9. 00
Placing head gates.....	each..	12. 00

The following specifications shall control in the work:

EXCAVATION.

"Classification of material: All material excavated will be measured in excavation only and estimated by the cubic yard under the following classes:

"Class 1. All material that can be plowed by a 4-horse or a 4-mule team, each animal weighing not less than 1,400 pounds, attached to a suitable plow, all well handled by at least three men; also all material that can without plowing be handled with scrapers.

"Class 2. Indurated material of all kinds that can not be plowed, as described under class 1, or that requires loosening by powder and can be removed in scrapers.

"Class 3. All material in which large rock occurs to such an extent as to prevent the use of plow or scraper, but excluding masses exceeding 1 cubic yard in volume.

"Class 4. All rock not included in classes 1, 2, and 3 that requires systematic drilling and blasting for its removal.

CONCRETE.

"The price paid for concrete shall cover all work in connection with building concrete structures, including forms, procuring gravel, sand, water, and all other materials required, except cement, which will be furnished at Mitchell, Nebr. Where reinforcement is required, 2 cents per pound will be paid for all reinforcing metal placed in the work. The price paid will include the cost of hauling the cement from the nearest government warehouse on the railroad to the site of the work.

PLACING HEAD GATES.

"The price paid for placing head gates will include all labor necessary to excavate for the head gates, constructing the same, and back filling around the complete structure. When constructed of timber, the lumber will be furnished at Mitchell, Nebr., and must be hauled by the party doing the work without extra compensation. When constructed of concrete, all material except cement must be furnished by the party

doing the work. Cement will be furnished by the Reclamation Service at Mitchell, Nebr.

"Art. 2. The association shall advertise for competitive bids, and the work shall be let at the lowest and best prices obtainable, provided that such rates shall not exceed those above stated. Competition may be waived in specific cases with the approval of the director. The prices named in article 1 shall, unless modified by supplemental agreement, be the maximum for the current calendar year.

"(a) Upon such work as may be done by force account the following scale of wages shall prevail:

For common labor	per hour..	\$0. 30
For skilled labor.....	do.....	. 35 to . 45
For man and 2-horse team with harness and wagon	do.....	. 56
For 2-horse team, harness and wagon and forage.....	per month..	26 00

"(b) All work carried on by force account will be carried on under foreman appointed by the engineer, United States Reclamation Service. On such work eight hours shall constitute a day's work.

"Art. 3. All work shall be done in accordance with the plans and specifications of the Reclamation Service filed with the association, and appropriately identified as part of this contract, and subject to direct supervision and approval by the engineer, who will check the records of the work done or supplies and material furnished by each person, as kept by the association.

"Art. 4. The association shall make all payments for work done under the terms of the agreement in certificates of approved form, and when approved by the engineer such certificates shall be receivable in payments on water-right charges levied by the Secretary of the Interior, as provided by departmental regulations."

Article 6 of the contract provides that—

"All work constructed under the terms of this agreement shall become the property of the United States, subject to all laws, rules, and regulations of the Government and particularly of the reclamation act and the agreements thereunder for the construction and control of the North Platte project."

Article 5 of said contract provides:

"That the said water users' association hereby guarantees the payments for that part of the cost of the irrigation works which shall be apportioned by the Secretary of the Interior to its shareholders" * * *

The contract under which it is now proposed to make the cash payments referred to in your questions have been held to be void by the Attorney-General in opinions rendered by him on May 26, 1909, and September 8, 1909, respectively.

It is not considered necessary therefore to set out said contract further than as above. Such contracts, at least so far as they are executory, are certainly void. To the extent, however, that they have been executed, such invalidity might be held to be immaterial (*United States v. Andrews*, 207 U. S., 229, 243).

The contract did not contemplate any payment to the North Platte Valley Water Users' Association as a corporation, but that all payments by the United States should ultimately be made to the members of that association individually by means of certificates to be issued, to be used as a set-off or reduction of water-right charges by the members of the said association.

The Secretary of the Interior in submitting the request on which the opinion of the Attorney-General of May 26, 1909, was rendered, propounded the specific inquiry:

"If you find that the law does not authorize or permit such cooperation, whether the United States is warranted in honoring and accepting all cooperation certificates already issued on the various projects or whether the only relief which may be extended to those who have performed labor or furnished moneys, materials, or supplies, will be in an act of Congress authorizing the payment to them of the money value of such labor, supplies, or material."

The Attorney-General answered this question as follows:

"These certificates having been issued under an unwarranted contract can not be received as credits for the charges imposed upon the land under the statute. They can not be used by the original payee or transferee as a discharge pro tanto of his indebtedness, but they are evidence of work performed, proper and necessary in the construction and maintenance of the irrigation work done under the supervision and inspection of the Chief Engineer, and certified to be correct, as memoranda for that officer. In this view I think the work may be paid for as upon quantum meruit, if there are funds in the reclamation fund. This may cause confusion by reason of the irregularity of the procedure, but, upon familiar principles, would seem to be equitable to the person furnishing the material and work. It precludes the recognition of the association as a joint participant in any way. It becomes a transaction

between the person performing the services and the officers of the Government charged with the duty of construction. If the money necessary does not come into the reclamation fund in the manner prescribed in the act, the parties have no remedy except in an application to Congress for an appropriation or for an amended act, providing in the way suggested by the contract, or some similar way, for credit upon charges on the land."

As I understand the purport of this opinion, it is to the effect that the value of the work done under the void contract may be paid from the reclamation fund to the persons who did such work; that the only purpose for which the certificates can be used is as evidence of the amount of work performed and by whom; that the certificates can not be used by the original payee or transferee as a discharge pro tanto of his indebtedness; and that the association can not be recognized as a joint participant in any way.

In the request of the Secretary of the Interior, on which the opinion of September 8, 1909, was rendered, a distinction was suggested between the procedure in the North Platte project and the Grand Valley Water Users' Association plan, on which the opinion of May 26, 1909, was rendered.

After a review of the case the Attorney-General said:

"I can see no difference whatever between the principles governing the contract in the North Platte project and those which were applicable to the Grand Valley contract, except perhaps in the North Platte project the matter is worked out more in detail. In the North Platte project, as in the Grand Valley, cooperation between the United States and the private association of water users was brought about by contract under which the water users undertook to do a portion of the work of completing a reclamation project, receiving certificates to the value of the work so done by them, which certificates are to be accepted in payment by the Government on account of the actual periodical payments required by the act to be made by those who enter upon land so reclaimed. These certificates are described by the Director of the Reclamation Service to represent—

"The value of work done or materials furnished in connection with the construction of the distribution system, and in surrendering the certificates each person, in accordance with the regulations and article 6 of the contract, transfers any right or interest he may have in the work performed, and in return therefor received a reduction of the water-right charges, which are due from him to the United States on account of a certain definite tract of land. This reduction becomes a set-off against the amount which he owes the United States on account of this charge on the land."

"I find no authority whatever under any statute for any officer to permit such a reduction as a set-off against an amount due to the United States on account of the charges referred to. While it may well be that the reasons for embarking upon a cooperative scheme, which are set forth by the director in his communication, would appeal to the legislative branch of the Government, they can not, in my opinion, operate to extend the statutory authority of the head of the department to make contracts for which 'the necessary funds' are not available in the 'reclamation fund' as constituted by act of Congress."

The basic principle underlying the questions submitted to this office is found in a suggestion by the Director of the Reclamation Service that the amount due to the Government from water users for water rights may be set off against amounts due by the Government for labor and material furnished as evidenced by the certificates issued while the cooperative plan was in force.

The Attorney-General in his opinion of September 8, 1909, quoted above, said:

"I find no authority whatever under any statute for any officer to permit such a reduction as a set-off against an amount due the United States on account of the charges referred to."

This would seem to dispose of the question as to your right to set off the amount due from water-right applicants against the amount due to such applicants.

I fully agree with the Attorney-General that no officer of the Government has a right to permit a reduction as a set-off of the water-right charges made under the act of June 17, 1902, on account of any debt that may be due from the United States to such water-right applicant.

These charges not being a proper subject-matter of set-off it is not necessary to consider the question as to whether any officer other than the Secretary of the Treasury could make or authorize such set-off or not. (See act of March 3, 1872, 18 Stat., 481.)

The questions submitted by you have so far been considered on the assumption that moneys were available in the fund to make payment.

The following statement is made by the Director of the Reclamation Service:

"There are sufficient moneys in the reclamation fund from which cash payments can be made, and therefore, in order to determine to whom such payments can or should be made, decisions are desired upon the following questions."

It is apparent from the manner in which the contract was made in this case that the Secretary of the Interior did not consider that the "necessary funds for such portions or sections of the project were available in the reclamation fund" at the time the contract was made.

With this understanding of the statement of the director, quoted above, the question now arises whether moneys coming into the fund after the making of such void contracts can be used to pay the persons who actually performed the work on these irrigation projects, notwithstanding the fact that the cooperative plan and contracts under which these works were accomplished were void because of want of authority to enter into such contracts.

It would appear from the language of the Attorney-General in his opinion of May 26, 1909, *supra*, that he was of the opinion that moneys properly coming into the reclamation fund after these works were entered upon under the said void contracts, *supra*, could be used to pay the laborers on a quantum meruit who actually performed the work. He could have no other meaning than this when he says—

"If the money necessary does not come into the reclamation fund in the manner prescribed in the act, the parties have no remedy except in an application to Congress for an appropriation or for an amended act, providing in the way suggested by the contract, or some similar way, for credit upon charges on the land."

The converse of the above proposition naturally follows, that if this necessary money does come into the reclamation fund, that it can be paid to the persons who performed the labor as upon a quantum meruit. The reclamation fund is not an annual appropriation, but an appropriation without year, and its use is not limited, as is an annual appropriation for payments to be made for service of any particular fiscal year. It is available to pay all valid legal indebtedness against it, regardless of the year or time when such indebtedness was incurred. Are the wages of the persons who performed the work on these irrigation projects, though rendered under invalid contracts, legal claims against the Government? It is true that section 4 of the reclamation act (32 Stat. L., p. 389) limits the Secretary of the Interior in contracting for the construction of irrigation projects to those only for which he has available money in the reclamation fund, but it does not follow that, because the Secretary of the Interior enters into a void executory contract, that when such contract is executed and the Government receives the benefits of such contract, that payments can not be made upon a quantum meruit to those persons who executed it and caused the Government to receive the results of their labor.

Section 3744 of the Revised Statutes provides that all executory contracts entered into by the Secretaries of War, Navy, and Interior, on behalf of the Government, shall be reduced to writing and signed at the end thereof by the contracting parties. It has been frequently held by the courts that contracts attempted to be entered into not observing the above requirements are void as executory contracts, but when executed are valid and binding upon the Government. (See 15 Compt., pp. 65 and 89, and authorities therein cited.)

It requires no great stretch of the facts in this case, in point of fact no stretch of facts, to hold that there was an implied contract on behalf of the Government to pay the laborers who performed the work and accomplished the reclamation works for which the certificates in question were issued the fair value of their services, and in the absence of other and different evidence these certificates may be taken to measure the value of such services, and the persons who performed such service can be paid from money now in the reclamation fund, provided such money is not pledged for some other and different project.

The first question is as follows:

"Can cash payments be made to those water-right applicants who hold certificates representing work furnished by them under their contract with the association, they also being indebted to the United States for water-right charges?"

Under the opinion of the Attorney-General of May 26, 1909, cash payments equal to the value of the work done or material furnished can be made to those who did the work or furnished the material. The certificates would be *prima facie* evidence of the value of the work done or material furnished. The fact that such holders of certificates may be indebted for water rights does not in any way affect your right to make payments to them for the amount of work shown to have been furnished by them by said certificates.

Your second question is:

"Can cash payments be made to those water-right applicants who hold certificates representing work furnished by other persons under contract with the association, such applicant also being indebted to the United States for water-right charges?"

Claims against the United States can not be assigned (sec. 3477, R. S.).

This question is therefore answered in the negative.

Your third question is:

"Can cash payments be made to those persons not water-right applicants who hold certificates representing work furnished either by themselves or others under contract with the association?"

You can only make payment to persons who did the work or paid others for doing it for them. You would have no right to make a payment to the holder of a certificate as evidence of work done unless the holder thereof did the work or furnished the material or paid some other for doing it for him. You should pay the person who did the work or procured it to be done, regardless of who now holds the certificate or who is liable for water rights.

Your fourth question is (a):

"(a) Can cash payments be made to the North Platte Valley Water Users' Association for the value of all unsettled-for work as evidenced by the outstanding certificates, the association also being a guarantor of all water-right charges due to the United States from the water-right applicants?"

This guaranty as to the United States is void and without consideration.

The cash payments for work should be made to the persons who did the work. If the association did the work it should be paid for the work and not for the certificates. If it did not do the work, no payment to it should be made.

"(b) If so, does any duty devolve upon the service to insure that proper payments are made by the association to the persons who actually performed the work or to the persons who are now holding the certificates?"

This is the second half of your fourth question and the answer to the first indicates the answer to this.

No duty devolves upon the Reclamation Service to see that the association makes any payments to any persons who performed work or hold certificates. It is the duty of the Reclamation Service to pay the persons who performed the service or procured its performance, regardless of who is now the holder of the certificates issued, and leave the parties to work out their equities and legal rights among themselves.

Your fifth question is:

"Assuming that affirmative answers will be given to all or some of the foregoing four questions, will the presentation of uncanceled cooperative certificates, which are known to have been properly issued and registered, and which have not been previously redeemed, be sufficient evidence of a right in the holder to receive payment from the United States of the amount represented thereby? It has been pointed out herein that while the entire work furnished by the association can be stated accurately from service records, the work supplied for the association by its several members can not be ascertained except by the use of the records of the association."

As I understand your questions they all relate to the payment for work done under an attempted contract with the North Platte Valley Water Users' Association (Incorporated), dated March 3, 1908, for which certificates were issued in accordance with article 4 of said attempted contract, which provides:

"Art. 4. The association shall make all payments for work done under the terms of this agreement in certificates of approved form, and when approved by the engineer such certificates shall be receivable in payments on water-right charges levied by the Secretary of the Interior, as provided by departmental regulations."

In his opinion of September 8, 1909, the Attorney-General held that this contract was void.

In his opinion of May 26, 1909, he held on the question of payment for work under the cooperative plan for which certificates had been issued that the work performed might be paid for as upon a quantum meruit to the persons furnishing the materials and work. He further said that:

"This may cause confusion by reason of the irregularity of the procedure; but, upon familiar principles, would seem to be equitable to the persons furnishing the materials and work. It precludes the recognition of the association as a joint participant in any way. It becomes a transaction between the persons performing the services and the officers of the Government charged with the duty of construction."

Article 2 of the void contract under which the work was done on the North Platte project fixed the price upon such work as was done by the force as follows:

For common labor.....	per hour..	\$0. 30
For skilled labor.....	do.....	.35 to .40
For man and 2-horse team with harness and wagon.....	do.....	.36
For 2-horse team, harness, and wagon, with forage.....	per month..	25. 00

"All work carried on by force account will be carried on under foreman appointed by the engineer, United States Reclamation Service. On such work eight hours a day shall constitute a day's work."

I am of the opinion that this provision and article 4 amounted to a request on the part of the Government addressed to the persons who did the work under it to perform service at the prices therein named, and when the services were performed their value became a binding obligation on the Government, which was not discharged by issuing the void certificates provided for in article 4.

The holders of the certificates so issued have no right to the payment of the amount stated on their face simply because they are the holders. (The Floyd Acceptance cases, 7 Wall., 666, 676.)

Their right to payment arises not from the certificates but from the fact of performance of service, and this claim can not be transferred.

The certificates were intended to be sufficient evidence that the holder had performed the service, or had paid some one else to perform it, or had paid the original holder of such certificate its value. Where the certificates do not show on their face that they have been assigned they would be prima facie evidence that the holder performed the service or paid some one else to perform it for him. The holder of an unassigned certificate should therefore be presumed to have performed the service, and the presentation of the certificate would be sufficient evidence of this fact and would entitle him to payment. Where the certificates appear to have been assigned, the holder by assignment would not be entitled to payment. In such case the payment, if any, should be made to the person to whom the certificate was originally issued.

The inclosures are returned herewith.

Respectfully,

R. J. TRACEWELL, *Comptroller*

The CHAIRMAN. The committee will take a recess until 2 o'clock.

(At 12.40 the committee took a recess until 2 p. m.)

AFTER RECESS.

The committee reassembled at 2 o'clock p. m.

The CHAIRMAN. The committee will please come to order, and the examination will proceed.

TESTIMONY OF HON. JAMES. R. GARFIELD—Resumed.

Mr. BRANDEIS. Mr. Garfield, in answer to Mr. James's question you stated in substance that there was no reason why Commissioner Ballinger should have conferred with you before acting on Mr. Glavis's telegram of January 22 and suspending the issuing of the patents to the Cunningham claims. I refer you to the following passage, found on page 131 of Senate Document No. 248, being a part of the letter of September 4 from Commissioner Dennett to the President, namely [reading]:

The practice of the office in determining and passing upon all cases is as follows: It is first considered by a competent clerk in the division. In a case such as this the clerk would be a graduate lawyer. It is then reviewed by the chief of the division and referred to a member of the board of law review, who passes upon it. It is not until this preliminary procedure that the Commissioner of the General Land Office or his assistant acts upon the case. I mention this procedure inasmuch as you will readily understand that it would be impossible for the commissioner to arrive at other than a well-considered opinion which had received the prior sanction of three officers at least, unless he were to take the case in his own hands and direct a proceeding—a course which is never taken and which is inconceivable to presume would be taken in any matter of the importance of these Alaska coal cases.

Now, I ask you, Mr. Garfield, whether that statement of Mr. Dennett expresses, as you understand it, the practice in the Land Office?

Mr. GARFIELD. It does; the usual practice and method of procedure.

Mr. BRANDEIS. And the matter would not come before the Secretary except upon an appeal or a proceeding in the nature of an appeal from the commissioner to the Secretary?

Mr. GARFIELD. Ordinarily not.

Mr. BRANDEIS. Now, I was asking before the intermission about—

Mr. JAMES. Right there, in an action of that sort, would that come in the shape of a personal interview or talk, or would it come by way of written instruments or documents to the Secretary of the Interior?

Mr. GARFIELD. In the ordinary course it would come by way of written documents.

Mr. OLMSTED. Let me ask, for information, does the Secretary of the Interior sign patents?

Mr. GARFIELD. He does not.

The CHAIRMAN. There is a clerk appointed to sign the President's name, as I understand it?

Mr. GARFIELD. That is correct.

Mr. BRANDEIS. Now, returning to the question of the Cale bill, I want now to refer you to the passage in the letter of Commissioner Dennett to Mr. Ballinger, dated April 6, 1908. It is not in the record; it is one of the papers furnished us in response to a call for all the correspondence between Commissioner Dennett and Mr. Ballinger during the year he was out of office.

The CHAIRMAN. Have you the letter there?

Mr. BRANDEIS. I want to call attention to a remark that is in this passage, and I therefore wish to offer in evidence this file of letters, but I think it will be necessary at this time to call your attention only to a few; others will be referred to later in connection with other examinations.

The CHAIRMAN. Are those files that have been sent in?

Mr. BRANDEIS. This is a file that was sent in by the Secretary in response to a call of the committee.

The CHAIRMAN. Is there any objection to admitting this file?

Mr. BRANDEIS (after a pause). Then I will hand the file to the stenographer.

The CHAIRMAN. Mr. Vertrees, is there any objection?

Mr. VERTREES. No, sir, Mr. Chairman; not at all.

Mr. BRANDEIS. Then I will call your attention to this passage which appears on—

The CHAIRMAN. Give the date of the letter.

Mr. BRANDEIS. Of the letter of April 6, 1908.

The CHAIRMAN. By whom and to whom?

Mr. BRANDEIS. By Mr. Dennett to Judge Ballinger. The letter begins: "My dear Judge." And this is the specific passage, Mr. Garfield, to which I call your attention [reading]:

In regard to the Cunningham group the situation is also very distressing and as much so as it is in all of the Alaska matters. You know that Glavis objected to the issuance of patents and I expect a report from him very shortly, having wired to him to make it, and probably there will be the same technical violation of a stupid law and the best thing they can do is to pound on Congress to pass that Alaska bill even ahead of the general coal bill, but the trouble is that the Alaska situation being a very meritorious one is being held as a kite on which to swing the tail of the coal situation in the United States. I do not really think this is fair, but that is the fact. Mondell naturally does not care a whistle for Alaska, but he does care for Wyoming.

Now, I ask you, having a special reference—

The CHAIRMAN. Do you introduce the whole letter?

Mr. BRANDEIS. The whole letter. This is the part of the file containing this letter.

Mr. JAMES. Whose letter is that?

Mr. BRANDEIS. This is a letter of Mr. Dennett to Judge Ballinger while he was out of office; and in fact the whole file here is of letters covering that period. They all appear, one right after the other, in chronological order.

The CHAIRMAN. They are admitted in evidence.
(The file referred to is as follows:)

CORRESPONDENCE, PERSONAL AND OFFICIAL, OF FRED DENNETT, INCLUDING TELEGRAMS AND LETTERS BETWEEN HON. R. A. BALLINGER AND HON. FRED DENNETT, FROM MARCH 4, 1908, TO MARCH 4, 1909, INCLUSIVE.

March 9, 1908, letter, Dennett to Ballinger, in re Conover and entry of Burns.
March 23, 1908, letter, Dennett to Ballinger, same subject.
March 30, 1908, letter, Dennett to Ballinger, same subject.
March 12, 1908, letter, Dennett to Ballinger, introducing Mr. Augustus E. Heaton.
March 14, 1908, letter, Ballinger to Dennett, as to great amount of land inquiries.
March 18, 1908, letter, Ballinger to Dennett, in re Hanford Irrigation and Power Company.
March —, 1908, letter, Dennett to Ballinger, same subject.
November 27, 1908, letter, Ballinger to Dennett, same subject.
December 4, 1908, letter, Dennett to Ballinger, same subject.
March 19, 1908, letter, Dennett to Ballinger, in re survey Tp. 27 N., R. 15 W., Washington.
March 12, 1908, letter, Dennett to Representative F. W. Cushman, same subject.
March 31, 1908, letter, Ballinger to Dennett, in re Alaska coal entries et al.
March 31, 1908, telegram, Ballinger to Dennett, same subject.
April 1, 1908, telegram, Dennett to Ballinger, in re Alaska coal entries et al.
April 6, 1908, letter, Dennett to Ballinger, same subject.
April 1, 1908, letter, Dennett to Ballinger, same subject.
April 18, 1908, letter, Dennett to Ballinger, same subject.
April 21, 1908, letter, Ballinger to Dennett, in re claim of Wm. Borland.
April 20, 1908, letter, Borland to Ballinger, same subject.
April 28, 1908, letter, Dennett to Ballinger, same subject.
April 28, 1908, letter, Dennett to Borland, same subject.
May 8, 1908, letter, Ballinger to Dennett, in re case of Kendall v. Long.
May 14, 1908, note of Carr to Assistant Commissioner Proudfit, same subject.
June 20, 1908, note of Carr to Chief of Division "C." Rice, same subject.
June 26, 1908, letter, Dennett to Ballinger, same subject.
May 20, 1908, letter, Ballinger to Dennett, in re claims of George L. Neff.
May 27, 1908, letter, Dennett to Neff, same subject.
May 21, 1908, letter, Dennett to Ballinger, miscellaneous.
May 22, 1908, letter, Ballinger to Dennett, in re Northern Pacific selection list No. 110.
May 28, 1908, letter, Dennett to Ballinger, same subject.
May 29, 1908, letter, Ballinger to Dennett, in re mineral claims, Spokane, Wash., land district.
June 15, 1908, letter, Dennett to Ballinger, same subject.
August 18, 1908, letter, Ballinger to Dennett, in re repayment application of John L. Corrigan.
August 27, 1908, letter, Dennett to Ballinger, same subject.
August 21, 1908, letter, Ballinger to Dennett, in re restoration of lands, State of Washington.
August 21, 1908, letter, Haynes to Ballinger, same subject.
August 27, 1908, letter, Dennett to Ballinger, same subject.
August (September) 3, 1908, letter, Haynes to Ballinger, same subject.
September 25, 1908, letter, Dennett to Ballinger, in re Cunningham coal claims.
October 2, 1908, letter, Ballinger to Dennett, in re resurvey lands.
October 7, 1908, note of chief of division of surveys to Dennett, same subject.
October 7, 1908, letter, Dennett to Ballinger, same subject.
October 5, 1908, letter, Dennett to Ballinger, case of Rose H. Schwinnen. Statement of Schwinnen, same subject.
February 1, 1910, statement, chief of contest division as to no record of letter to Ballinger, same subject.
October 14, 1908, letter, Ballinger to Dennett, in re bill dividing third judicial district, Alaska.
October 20, 1908, letter, Dennett to Superintendent Senate Document Room, same subject.

November 2, 1908, letter, Ballinger to Dennett, requesting map of Washington Territory.

November 7, 1908, telegram, Dennett to Ballinger, same subject.

November 9, 1908, telegram, Ballinger to Dennett, same subject.

November 9, 1908, telegram, Dennett to Ballinger, same subject.

November 10, 1908, letter, Dennett to Ballinger, same subject.

November 2, 1908, letter, Dennett to Ballinger, miscellaneous and personal.

October 8, 1908, telegram, Ballinger to Dennett, re Hawkins, etc.

October 9, 1908, telegram, Dennett to Ballinger, same subject.

October 17, 1908, telegram, Dennett to Ballinger, same subject.

November 4, 1908, letter, Dennett to Ballinger, in re Hawkins's timber and stone entries.

October 11, 1908, telegram, Ballinger to Dennett, same subject.

October 20, 1908, telegram, Dennett to Ballinger, same subject.

October 29, 1908, telegram, Ballinger to Dennett, same subject.

October 30, 1908, telegram, Dennett to Ballinger, same subject.

November 16, 1908, telegram, Dennett to Ballinger, in re Parker case.

November 16, 1908, letter, Ballinger to Dennett, same subject.

November 28, 1908, letter, Dennett to Ballinger, same subject.

November 18, 1908, letter, Dennett to Ballinger, same subject.

December 11, 1908, letter, Ballinger to Dennett, in re coal entry of W. G. Whorf.

December 16, 1908, telegram, Dennett to Ballinger, same subject.

December 17, 1908, letter, Dennett to Ballinger, same subject.

December 17, 1908, letter, Dennett to register and receiver, Juneau, Alaska, same subject.

December 18, 1908, note of Finney, same subject.

February 9, 1909, letter, Dennett to Ballinger, personal, in re offer insurance corporation.

MARCH 9, 1908.

MY DEAR JUDGE: The inclosed is a copy of a telegram received by Mr. Humphrey and brought to me on Saturday; a similar telegram was also received by Senator Piles and called to my attention. I inclose a copy of the letter in question.

It would appear that Mr. Connover is unnecessarily upset. He has failed to differentiate as between a "collusive" and "speculative" entry, and the mention of his name in the paragraph, which was an excerpt from the Forester's report, in connection with the assertion that the entry appears to be speculative, has led him to believe that he is accused of collusion with Mrs. Burns. Of course, you will readily see the difference between "collusive" and "speculative," there being nothing criminal in a speculative entry, which is an entry taken not for the bona fide purpose of a home, but for the purpose of acquiring title for the sake of the value of the land or the timber thereon and with the intention of selling the same. I do not know Connover, and I do not know exactly the position he takes. If he feels personally aggrieved that his name should have been mentioned and he is sincere in this, then I feel that inasmuch as the name is perhaps not germane to the issue, and inasmuch as may be it need not have been put in the letter at all, the office could substitute a letter omitting his name for that which is now on file, and I inclose a letter which I would authorize you to mail to the register and receiver. If, however, Connover wants to make an issue out of this and is laboring under the impression that he can berate the Land Office and compel the Land Office to change, then we will "stand pat," inasmuch as there is nothing in the letter for which I can be held personally responsible or for which the office can be held liable. It seems to me that Mr. Connover is an excitable individual, but you will know best. Of course, if the Times has printed an article that Mr. Connover is accused of collusion with Mrs. Burns, then Mr. Connover's remedy is against the Times, inasmuch as the letter does not bear that construction. This is merely a presumption on my part so far as any publication in the Times is concerned. I wish you could so far still retain your connection with the office as to put yourself to the trouble to see Mr. Connover and find out what his position is.

I understand that the Senate committee has made one recommendation, namely, the increase of a chief of division from \$2,400 to \$2,750. This is almost as great an increase as the \$400 appropriation for books, instead of \$200, but if it is done for the purpose of giving us an administrative officer, then we will accept it thankfully. Things otherwise are moving along nicely.

Sincerely, yours,

Commissioner.

HON. R. A. BALLINGER,
901 Alaska Building, Seattle, Wash.

MARCH 23, 1908.

MY DEAR JUDGE: I have your letter of the 18th instant. I have also a letter from Mr. Conover. Now that I am satisfied that Mr. Conover is acting in good faith and from a feeling which any sensible man would naturally have, I am perfectly willing to admit, as I thought at the time, that the remark concerning Mr. Conover was entirely gratuitous.

The step that I took immediately was to instruct Division "P" that they should not include in any letter holding an entry for cancellation the name of any person, thus implicating him, unless the said party was essential to the case, so that he could appear before the court in which was recorded the letter containing the mention of his name for the purpose of having it removed therefrom. The trouble with the Burns entry is that the Forest Service have made three adverse reports. In this office we were entirely willing to patent the entry to her, but in view of the fact that we discovered a noncompliance of a sufficient residence of the law, I doubt whether it will be possible to take it back, but I certainly shall take back the letter which mentions Mr. Conover's name and substitute for it one in which he is not mentioned. if I find it impossible to reconsider the case.

With best wishes to all, very sincerely,

Hon. R. A. BALLINGER,
901 Alaska Building, Seattle, Wash.

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MARCH 30, 1908.

MY DEAR JUDGE: I have had the Burns case examined very carefully and am convinced that the decision as rendered formerly was not as it should have been; in other words, it was entirely too severe. Of course you know the pressure brought to bear upon this office by the Forest Service and the severity of the decision was due to that pressure. We have reconsidered it and will cancel the certificate but hold the entry intact, allowing Mrs. Burns to go upon the land and complete her residence, making up that six months. This is the best that can be done and should meet the case. There is no doubt but that she is lacking six months, as the law is construed, and properly so. We will call back the former decision, so that the reference to Conover will no longer be of record. I think I told you that I have given instructions to Division "P" that in no case shall they make mention in a derogatory fashion of any person or individual in a decision unless the person or individual so mentioned has an opportunity of appearing before the register and receiver in a case duly set and defending himself against the attack so made. This, you will agree with me, is a just regulation, and if we had thought of it before we would have made it. You can tell Mr. Conover that I have signed a decision along the line above set forth.

The Secretary has consented to the appointment of a committee of one from this office, one from the Reclamation Service, and one from the Assistant Attorney-General's office, who shall sit on all questions of regulations issued by the Reclamation Service which affect this office. If these parties agree unanimously, then the regulation is to be presented to the Secretary and he will sign it; if they disagree, the matter goes to the Assistant Attorney-General for consideration and then to the Secretary, an appeal lying, of course, on the part of the director or the commissioner, to the Secretary. The representative of this office will be Ucker, who, of course, will discuss with me all matters before binding, or attempting to bind, the office. This matter came to the point on a regulation issued by the Reclamation Service, and approved by the Secretary, directing us to issue orders to registers and receivers to accept due bills for work performed on reclamation projects in lieu of cash in payment of the annual installments. We did our best to meet this, but after consideration we concluded it was against all existing law, and I so informed the Secretary and asked him to appoint the board as above set forth. He immediately met the situation in that straightforward way of his, and the board was appointed.

Hope you are well and prospering. Sincerely, yours,

Commissioner

Hon. R. A. BALLINGER,
901 Alaska Building, Seattle, Wash.

MARCH 12, 1908.

MY DEAR JUDGE: This will introduce to you Mr. Augustus E. Heaton, who is the son of an old friend of mine, who resides in Washington, D. C. Mr. Heaton is going to Seattle to become a resident of our city. He is a civil engineer and has also had experience in a business way. I commend him to your kind consideration.

Very truly, yours,

Hon. R. A. BALLINGER,
901 Alaska Building, Seattle, Wash.

SEATTLE, WASH., March 14, 1908.

MY DEAR FRED: We arrived here last Tuesday night in good condition after our long journey, my mother standing the trip very well indeed. I can not express to you how good I feel to be back again at home and in my office, and yet I can not help but think of you with your work and troubles, and am anxious to know from time to time how you are getting along, and, as you know, you have my constant prayers for your success.

Register Smith called on me a little while ago, and asked me regarding the complaint which Horner had made against him. He knew nothing of any investigation being made by Dixon, and I judged from what he said that Dixon has not yet acted in the matter. It seems to me that Dixon should be peremptorily ordered to proceed with this investigation, as it has been several weeks since he was directed to make the same.

I have had a constant stream of visitors in connection with public-land matters, and wrote the honorable Secretary to-day that I thought he ought to establish a branch general land office in Seattle, with a clerical force, so that I would be relieved.

Please give my best regards to Mrs. Dennett and the office force that may be interested in knowing about me, and believe me, as ever.

Yours, very sincerely,

R. A. BALLINGER.

Hon. FRED DENNETT,
Commissioner General Land Office, Washington, D. C.

[Personal.]

SEATTLE, WASH., March 18, 1908.

MY DEAR SIR: In a conversation just had with Judge C. H. Hanford I learn that a serious difficulty exists respecting the rights of the Hanford Irrigation and Power Company over their power site on the Columbia River, in section 2, township 13, range 23 east. It seems to result from the fact that the surveys on that side of the river were probably paper surveys and hence no monuments or survey stakes appear to be found. It is the general supposition that they were never set. From a protraction of the survey, from known corners on the other side of the river, certain fractions in section 2, which the Hanford Irrigation and Power Company supposed it owned, and upon which it built its power house, appear now to fall upon the south half of southwest quarter of section 2, and there is no such river front and fractions as the field notes seem to call for outside of this south half of southwest quarter. One McCurley has made application to scrip this eighty, and, as I understand, is undertaking to hold up the Hanford Irrigation and Power Company. The application of McCurley has not yet passed to patent, as I am informed.

Pending a full and careful investigation of the matter and a determination of the riparian rights through the patented lands in section 2, which appear to lie from the record between this south half of the southwest quarter and the river bank, I feel that the application of McCurley should not go to patent. I would appreciate it if you would advise me as to the status of the McCurley application and give us a reasonable time in which to present the full situation in case it should be necessary. I do not wish at this time to file a formal protest against the McCurley application.

Please give me the status of lot 3, section 2, township 13 north, range 23 E. W. M. We are anxious to have patent issue as early as possible on this tract. If a show is necessary to expedite it, please let me know.

Yours, very truly,

R. A. BALLINGER

Hon. FRED DENNETT,
Commissioner of the General Land Office, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March —, 1908.

HON. R. A. BALLINGER,
Alaska Building, Seattle, Wash.

DEAR JUDGE: I have your letter of the 18th instant, and advise you in response that all of sec. 2, T. 13 N., R. 23 E., North Yakima land district, Washington, appears to have been appropriated as follows:

Lots 4, 7, and 8 were entered as a homestead December 21, 1895, by Hiram Parish, and patent issued thereon November 25, 1902, upon final certificate 994, dated February 17, 1902.

Lot No. 3 was selected by the Northern Pacific Railway Company October 11, 1906, act of July 1, 1898, and patent therefor was issued January 6, 1908, and delivered to the company January 11, 1908.

Lots 1, 2, 5, 6, and 9 were selected by the said company April 1, 1907, under said act of 1898, list 93, and the W. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ was so selected August 9, 1907, list 107, but no patent has yet issued upon either of these lists.

The nonmineral affidavit attached to the selection of the W. $\frac{1}{4}$ SW. $\frac{1}{4}$ (not S. $\frac{1}{4}$ SW. $\frac{1}{4}$ as described by you, which would cover lot 8) was made by James A. McKerlie, and it is presumed the company has sold this tract to him. The records do not show any claim in his name in this section. I inclose a diagram showing the subdivisions of said section 2 as surveyed, from which it will appear that all the tracts in the section bordering on the west side of the river have been patented, and that the W. $\frac{1}{4}$ SW. $\frac{1}{4}$ is cut off from the river by lots 7 and 8. Action upon the selection of the W. $\frac{1}{4}$ SW. $\frac{1}{4}$ will await a communication from you.

The records do not show any application by the Hanford Irrigation and Power Company.

Yours, very truly,

Commissioner.

SEATTLE, WASH., November 27, 1908.

HON. FRED DENNETT,
Commissioner of General Land Office,
Washington, D. C.

MY DEAR FRED: The Hanford Irrigation and Power Company have come to an arrangement with J. A. McKerlie respecting his scrip filing, which covers the W. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 2, Tp. 13 N., R. 23 E. W. M., in Yakima County. As you will remember there was a difficulty respecting the survey of this township, in which lot 7 of said section, acquired by the Hanford Irrigation and Power Company, and on which they supposed they had erected their power station, does not appear to exist on the ground, although shown in the survey, the power station being located on the NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of said section. The arrangement is to the effect that the scrip entryman will exchange this NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ for another forty with the power company, upon the scrip entryman getting a patent to the eighty. You may, therefore, clear the record of any objection the Hanford Irrigation and Power Company may have to the issuance of patent to the parties filing scrip on the W. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of section 2 aforesaid.

In order to finance the company and clear the title to the lands, the power company has been obliged to make this exchange and abandon the effort to adjust the difficulty arising in connection with the survey of lot 7 above mentioned. Please have action taken in reference to the issuance of patent in this matter as early as the record will permit.

Yours, very truly,

R. A. BALLINGER.

(80) Sel. Aug. 9/07, by the N. Pac. R. R. Co. List No. 107, North Yakima.

Twp. withdrawn by "E," July 29 and Aug. 4/04.

Plat filed May 3, 1880.

Lot 7 is covered by F. C. 994, Feb. 17/02, N. Yakima, by Hiram Parrish.

SW. $\frac{1}{4}$, SW. $\frac{1}{4}$, sec. 2, 13 N., 23 E., subject to right of way, Priest Rapids Ry. Co., act Mch. 3/75. Apprd. Oct 14/08.

19018-194599]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 4, 1908.

Hon. R. A. BALLINGER, *Seattle, Wash.*

MY DEAR JUDGE: In reply to your letter of November 27, 1908, in reference to the W. 1/4 of SW. 1/4 of sec. 2, T. 13 N., R. 23 E., W. M., Washington, selected by the Northern Pacific Railway Company, August 9, 1907, list No. 107, North Yakima district, under act of July 1, 1898, I advise that said list has been examined in connection with the records of this office, and the tract embraced therein being found free from adverse claims will at once be clear listed and submitted to the department for approval for patent.

Yours, very truly,

FRED DENNETT, *Commissioner.*

"E."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 19, 1908.

Hon. R. A. BALLINGER,
Seattle, Wash.

MY DEAR JUDGE: Your letter of the 12th instant, inquiring about a letter sent to you as commissioner by W. Edward Newbert under date of December 23, 1907, respecting the survey of fractional T. 27 N., R. 15 W., has been received.

You state that no action was taken on the application for survey, as the letter was never received, and you wish me to look into the matter, with a view to have speedy action taken.

In reply I will state that a copy of the said letter was attached to one sent to this office by Hon. F. W. Cushman, and upon investigation I find that the matter of the application for the survey of said land has received attention, as the inclosed copy of an official letter ("E") to Representative Cushman will show.

By this it will be seen that the preliminary examination for the survey has been assigned to an examiner of surveys and will be attended to as soon as weather conditions will permit.

I will be glad to further the application and will see to it that the survey is accomplished as soon as possible if favorably reported upon.

Hoping you are enjoying the relief from the exacting duties of official life, and with best regards,

I remain, faithfully, yours,

FRED DENNETT,
Commissioner.

Will write personally at early date.

45392 1908 "E" J. S. W.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 19, 1908.

[Application for survey of fractional T. 27 N., R. 15 W., Washington.]

Hon. F. W. CUSHMAN,
House of Representatives, United States.

SIR: I am in receipt of your letter of March 7, 1908, inclosing a letter, dated Seattle, Wash., February 29, 1908, addressed to you, signed W. Edward Newbert, P. O. Mora, Clallam County, Wash., relative to an application for the survey of fractional T. 27 N., R. 15 W., W. M., Washington, made by alleged settlers on the lands. Attached to Mr. Newbert's letter is a copy of a letter dated Seattle, Wash., December 23, 1907, which is addressed to this office, reciting the alleged facts as to settlements on the lands in said fractional township.

In reply I have the honor to inform you that with his letter of October 24, 1907, the United States surveyor-general for Washington transmitted to this office the applications and affidavits for survey of Theodore F. Rixon, W. Edward Newbert, and James B. Dodge, alleged settlers on the lands in sections 1, 2, and 12 of fractional T. 27 N., R. 15 W., Washington, alleging settlement in May, 1907, and improvements valued at \$1,000 and \$200, respectively.

The area of the lands in question, as stated by the surveyor-general, will range from 200 to 700 acres, are far distant from the regular lines of travel, and can only be reached

by about 30 miles of trail, which will make an examination in the field very expensive and occupy much time.

By office letter "E" of November 7, 1907, the surveyor-general was advised regarding the stated application for survey, and that at the earliest practicable opportunity an examiner of surveys would be designated to make a personal examination in the field as to the bona fides of the applicants for survey and alleged settlers, and on receipt of his report the surveyor-general would be further notified.

Your attention is invited to the following extract from office letter "E" of November 7, 1907, to the surveyor-general, viz:

"On examination of the affidavits of the petitioning settlers it appears that the lands embraced in the respective claims in the designated sections are apparently timber lands, judging from the amount of "slashing" and "clearing" already done and contemplated. As these alleged settlements were only initiated in May, 1907, and the improvements consist of lumber cabins (34 by 32, 12 by 16, 12 by 14), with no cultivation, it is deemed inexpedient at this time to authorize the survey in the absence of more specific information regarding the class and character of the lands and the bona fides of the alleged settlers."

Owing to the isolation of the lands and difficulty of access, as stated by the surveyor-general, this office has not as yet been able to detail an examiner from the field service in Washington to make the required examination as to the bona fide character of the alleged settlements.

It is confidently expected, however, that a favorable opportunity to make the necessary examination in the field will present itself early in the coming surveying season and will be promptly embraced.

Very respectfully,

FRED DENNETT,
Commissioner.

MARCH 31, 1908

Hon. FRED DENNETT,

Commissioner General Land Office, Washington, D. C.

MY DEAR FRED: Yours of March 24, in re Clerk Spear, duly received; also communication in reference to Conover matter.

Regarding Clerk Spear, Mr. Battle will write him, asking him to hold on to his present position if possible until June 30. If, however, it develops that a change can be made before this time, I know it would be appreciated, as he is in rather a critical condition, as I am informed.

Frank Fritsch, a German, of Sedro Woolley, has been pestering me about his home-stead claim. I referred him to Randolph, but he comes back at me with a letter in German, which I am now forwarding to you. The old man's case appeals to me as one of great hardship, but I doubt if anything can be done for him. I would suggest that you look it up and write him. I can not give you the numbers of the entry or the land.

McDonald, who is representing certain coal entrymen in the Katalla field, was in to see me this morning with Mr. Arnold, president of the First National Bank. McDonald has the only claim that has been developed in that field to the extent of being able to get out coal in any quantity. I refused to accept a retainer or compensation for advice, but advised them to keep their entries perfectly clean and not to mine coal beyond a reasonable limit of prospecting and development. It will be several months before their claims will be ready for entry. I am impressed with the belief that they are all acting bona fide and within the law. I advised Mr. Arnold to write to Glavis, to call upon him when in Seattle, so that he could lay before him their situation. I find that the Alaska entrymen are in hearty accord with the main features of the Cale bill and would like to see the same enacted into a law.

I had a letter from Mr. Mondell in regard to this bill, H. R. 19421, a carbon copy of my answer to which I herewith inclose to you.

Mr. C. J. Smith also called on me the other day regarding the claim in the Katalla coal field, which he, ex-Governor Moore, and others are interested in and which were ordered to patent and afterwards verbally suspended. Mr. Heltman understands the circumstances. Mr. Smith will probably visit Washington in the course of two or three weeks, hoping to jar loose these entries and have them proceed to patent. I had to explain to him somewhat in detail the situation, and if he calls on me for the same I will give him a letter to you and the Secretary. I think that it will be a mistake to continue to hold up the entries in this field against which no reasonable protest exists, and that it would be good policy to speedily clear up the situation. Of course I realize that it may be advisable to hold matters in abeyance until this session of Congress adjourns to see if any remedial legislation is secured.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1601

but that should not, however, affect the rights of entrymen where no valid protest or charge exists against the entries.

You are at liberty to show this letter to either Mr. Mondell or the Secretary, if you think advisable.

With best regards, I remain,

Yours, very sincerely,

SEATTLE, WASH., March 31, 1908.

HON. FRED DENNETT,

Commissioner of General Land Office, Washington, D. C.:

R and R Juneau wire Frank Watson, "When application is filed applicant waives remainder of three years and must make entry immediately; hurry." Watson advised in Washington no such waiver would result. Advise me by wire, and, if necessary, R and R Juneau.

R. A. BALLINGER.

[Telegram.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 1, 1908.

R. A. BALLINGER, Seattle, Wash.:

Statement of register and receiver Juneau substantially correct. Letter follows.

DENNETT, Commissioner.

APRIL 6, 1908.

MY DEAR JUDGE: Fritz's letter, with translation, inclosed in yours, duly received. You can not be bothered with Fritz. I have been into this case very thoroughly, and Fritz has slept on his rights, unfortunately for him. He is an abusive old fellow, and one of those individuals who never let up, and has never become so Americanized as to look out for himself, but has the German idea that the Government should look after him in every respect. Smith decided the case in Fritz's favor, simply out of sympathy, and when Division "H" took it up, they reversed Smith's decision. I had made a report on the matter as special agent and had tried to be as impartial as possible, but was fearful that I might have given Fritz the worst of it, so I told the examiner that I had hoped he would not be prejudiced by my report. He said that he had used every effort not to be influenced by it; that he considered it to be favorable to Fritz, but that the law in the case was against him; so that I was successful in my endeavor to be thoroughly impartial, inasmuch as I thought I had gone a little against Fritz, and the examiner interpreted the report in his favor.

The department insists upon putting the alternative proposition in the coal bill, but that is not the real trouble. The real trouble is in the last section, which ratifies all entries. I have told the Secretary that I could not agree to the ratification, which would have the effect of recognizing "dummy entrymen;" that while I was perfectly agreeable to ratifying all transactions wherein the person who made a declaratory statement had prior to cash purchase turned over to a corporation, retaining therein an interest of his own, showing that the entry was made for his own benefit, in part, at least, and that the conveyance to the corporation was more by way of protection to people holding lands in continuity, I would not agree to ratify entries where some corporation had secured a number of conductors, laborers, etc., to make them for the benefit of the corporation, giving the applicants \$100 or so for their trouble. This, of course, is what Mondell wants, as the Union Pacific has done this exact thing in the Horse Thief Canyon case. Woodruff is enthusiastically for it, acting, I presume, under suggestions from Pinchot. You will remember Pinchot's action at the first meeting. Mondell wants it, and Cornish and Judge Payson, who were present at one of the interviews, think that it is only fair and just that it should be passed. Garfield, I do not know where he stands. He told me that he thought I was right and then at the next meeting seemed to be against me and ended up by saying that we would refer the matter to the Attorney-General, and when I asked him after the meeting where I stood, he told me with a smile that he understood my position absolutely. The Secretary has since told me that he expected to settle the matter with the Attorney-General very promptly on my calling his attention to the distressed condition in Alaska. Now, if they come to my way of thinking on the matter, then I shall know what part I took in it. I was evidently used to stand up and relieve the Secretary, but if they agree with Woodruff.

I do not know where I am, for I certainly will not agree to the proposition, and I do not think that the administration can afford to do it.

In regard to the Cunningham group, the situation is also very distressing, and as much so as it is in all of the Alaska matters. You know that Glavis objected to the issuance of patent, and I expect a report from him very shortly, having wired to him to make it, and probably there will be the same technical violation of a stupid law, and the best thing they can do is to pound on Congress to pass that Alaska bill even ahead of the general coal bill, but the trouble is that the Alaska situation being a very meritorious one is being held as a kite on which to swing the tail of the coal situation in the United States. I do not really think this is fair, but that is the fact. Mondell naturally does not care a whistle for Alaska, but he does care for Wyoming.

We have had a serious time with the Reclamation Service, but have got the matter in shape now. The Secretary signed an order under the terms of which certificates of work done were to be taken by our receivers in lieu of cash on payments of annual installments. This was signed without consultation with the land office and proved a very serious shock to our steady-going folks over here. We labored with it for ten days in order that it might not be said that we had taken hasty action, and I then told the Secretary that we were unable to cope with it under existing law and suggested the appointment of a committee consisting of one from this office, one from the Reclamation Service, and one from the Assistant Attorney-General's office, to which regulations desired by the Reclamation Service and affecting this office should be referred, and I stated that this case was one that should go there. The Secretary was very nice about it, and when I said that the matter should have gone to the Treasury he frankly said, "I made a mistake; I should have sent it there." The committee has been appointed; Ucker represents this office. I have placed him as a sort of supervisory chief of Division "K," making Andree acting chief of "H." If the committee can not agree unanimously, then the case goes to the Attorney-General's office. In this way we have got the Secretary protected if he will stand by his arrangement. The trouble is he has been signing regulations submitted to him by the Reclamation Service without having them considered by his Attorney-General's office, and you can see that under our present arrangement his own legal force will have the final say. This is somewhat lengthy, but gives you a "bird's-eye view" of the more important situations. Rittenhouse has had to be detailed for a week or ten days in the Hyde-Benson case. He will come back when Neuhausen gets here. They wanted him for the whole term.

With best regards,

Very truly, yours,

Hon. R. A. BALLINGER,
901 Alaska Building, Seattle, Wash.

Commissioner

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April --, 1908.

Hon. R. A. BALLINGER,
Seattle, Wash.

SIR: Referring to your telegram of March 31, 1908, and my answer of April 1, 1908, relative to Alaska coal applications, I inclose a copy of circular instructions of March 3, 1908, on which, apparently, the statement of the local land officers at Juneau was based.

That part of their statement which required that entry be made "immediately" would have to be construed in connection with the statute and regulations, an examination of which shows that after filing application for patent publication must be made for sixty days, that a period of six months after publication must expire within which adverse claims may be filed, and that the purchase price must be tendered within ninety days from the expiration of the six months' period. See paragraphs 14 and 16 of coal regulations, April 12, 1907, and last paragraph instructions March 3, 1908.

From this it will be seen that eleven months at least may elapse after the filing of application for patent before entry need be made.

Should claimants have filed applications for patent within a less time than required by the statute, there would seem to be no reason why they might not withdraw their applications if they are not prepared to proceed at this time, because of a misconstruction of the law or for other reasons, and rely on their possessory rights during the remainder of the three years fixed by the statute. It should be understood, however

that a withdrawal of an application carries with it all proceedings thereunder, and the claimant is relegated to whatever rights he possesses under his location.

I inclose also a copy of the coal-land circular of April 12, 1907.

Very respectfully,

FRED DENNETT, *Commissioner*.

APRIL 18, 1908.

MY DEAR JUDGE: The coal bill is settled as follows: The amnesty clause is to go in ratifying to the extent of 2,560 acres all entries, provided that all entries above that amount—that is, patented or unpatented—be redeemed to the Government, and the applicant paying the additional price per acre, as classified, he to receive credit for all moneys paid on all of his entries. This ratification is where the entries were made by dummies or otherwise. The Secretary insists upon an addition in the nature of a section stating that no criminal proceedings are to be necessarily abated. I called his attention to the fact that it would be impossible to get a criminal condition after the enactment of the clause which I have outlined, which you know to be a fact. He also insists upon an alternating leasing clause. I understand that Mr. Bonaparte was against this amnesty proposition, but from what Mr. Woodruff indicated in the conference the White House wanted it. I told you in my last letter how I feel personally and I have no reason to change.

The reclamation situation is somewhat complex. The reclamation people have proceeded to adopt a system under which certificates for work done could be accepted in lieu of cash for installments. We have thrashed this out with the Secretary and the Secretary has agreed that he will issue an amended public notice under section 4 of the reclamation act after he has been advised by the fiscal agent as to how many certificates have been handed in, deducting from the total cash to be paid the amount of the certificates and notifying us as to the amount due on the particular entry. In this way the skirts of the Land Office are cleared and we do not have to store any certificates for work. It was quite a fight but the Land Office is, I think, free from blame, though I suppose I am a bad man. The fiscal agent is to collect the installments, but no credit is to be given until the money is sent to the receiver or deposited in a national depository to the credit of the receiver, and the circular is to be amended so that the entryman is to be notified that he pays to the fiscal agent, who will act not as a government officer but as the entryman's agent in forwarding the money. I told the Secretary that any other practice would be one of deceit and would be a representation to the entryman that he was safe in paying when he really was not.

I did not see the criticisms in the paper to which you allude. Hope you are well and prospering.

Sincerely, yours,

FRED DENNETT.

R. A. B., *Seattle, Wash.*

[Law offices Ballinger, Ronald, Battle & Tennant, rooms 901-906 Alaska Building, Seattle, Wash.]

APRIL 21, 1908.

HON. FRED DENNETT,

Commissioner General Land Office, Washington, D. C.

MY DEAR FRED: I inclose you a letter from William Borland, of Lyman, Wash., regarding his claim, about which I have no recollection. Please investigate and write him.

With best regards, I remain,

Yours, very sincerely,

R. A. BALLINGER.

P. S. In writing Borland, make a copy to be sent to Judge Ballinger, please.
DMC.

LYMAN, WASH., *April 20, 1908.*

MR. BALLINGER, *Seattle, Wash.*

DEAR SIR: I have a claim that you gave a decision on and you decided it against me. I don't think you ever saw the papers that were sent to Washington, D. C., about our contest. I lived on that place six years, studied, proved up on it about fourteen years ago, nineteen years since I took it up, paid taxes two years, put every cent I had into it, put in fruit trees, two houses. The inspector didn't tell the truth about that claim. There is a house there fourteen by sixteen and when I first went on

there I carried an ax, a peevy, sledges & wedges, hand saw & crosscut, nails & hinges, a drawing knife & a plain and the inspector valued it at ten dollars after the cabin was built. When I had my hearing in Seattle a man by the name of Dennis was listening to the case with Mr. Ellots and this Mr. Dennis got the Land Office in Washington, D. C., before my case comes off and he & Elliot are first cousins and my lawmen told me, my case come up on Saturday and they agreed to give it to me & were going to sign it Monday and he said Elliot got after them and got them to sign it Monday against me. I have voted the Republican ticket all my life and didn't think they would do this.

Everybody says they think Elliot is getting half the claim from the fellow that is on it now. Mr. Ronyelds his partner has collected leans on logs eighteen years ago for me.

I hope you will try and help me out as the case was not decided right.

Very truly yours,

WM. BORLAND.

"P"—27058—BWM.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 28, 1908.

Hon. R. A. BALLINGER,
Seattle, Wash.

MY DEAR JUDGE: I am in receipt of your letter of April 21, 1908, transmitting a letter from William Borland in regard to his homestead entry, and transmit herewith a copy of my letter addressed to him of this date giving him the status. This matter has been pending a great many years and two hearings have been had, in both of which decisions were rendered in favor of the Government and against him.

With kindest regards, I am,

Sincerely, yours,

FRED DENNETT, *Commissioner*.

This is the case which was submitted to Jack. He was inclined to be in favor of Borland. After taking it up with Magee (Div. P.) you sustained that division.
GVF.

"P"—27058—BWM.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 28, 1908.

Mr. WILLIAM BORLAND, *Lyman, Wash.*

SIR: Your letter of April 20, 1908, addressed to Hon. R. A. Ballinger, of Seattle, Wash., has been referred to this office for reply. In said letter you ask to be advised regarding your homestead entry No. 15919 for lots 1 and 2, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 4, T. 32 N., R. 10 E., Seattle, Wash., land district.

On April 1, 1908, this office, in reply to a letter addressed by you to the President relative to your entry, advised you that by letter "P" of February 24, 1908, addressed to the register and receiver at Seattle, Wash., this office promulgated departmental decision of February 15, 1908, affirming office decision of October 25, 1907, which refused to reinstate your homestead entry. It was further stated in said letter that the register and receiver at Seattle, Wash., had been directed to notify you of such action.

Very respectfully,

FRED DENNETT, *Commissioner*.

GVF.

[Law offices Ballinger, Ronald, Battle & Tennant, rooms 901-906 Alaska Building, Seattle, Wash.]

MAY 8, 1908.

Hon. FRED DENNETT,
Commissioner General Land Office, Washington, D. C.

MY DEAR FRED: Your recent letter at hand respecting the case of Gustavus S. Kendall v. Minnie S. Long, involving the NE. $\frac{1}{4}$ of sec. 24, Tp. 15 N., R. 6 W. I am informed by Mr. Langhorne of Tacoma, attorney for Minnie S. Long, that he has just filed motion for rehearing in this case. I wish you would see that the matter is given careful attention, as I am impressed with the belief that the entry woman has acted in good faith and is entitled to relief.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1605

The King County convention have unanimously indorsed me as delegate at large to the national convention. I presume this means that I will have to go to Chicago in June. I hope it may be possible for me to run down to Washington and see you. I have not been desirous of becoming involved in this mission, although I have said that I was willing to go if the party considered it necessary. This State will undoubtedly send a Taft-instructed delegation to the Chicago convention, as there appears to be nothing else discussed and no other candidates mentioned.

With best wishes for your success and prosperity, I remain,

Yours, sincerely,

R. A. BALLINGER.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 14, 1908.

Mr. DENNETT:

Mr. Proudfit says the motion for rehearing referred to in Judge Ballinger's letter (attached) is in Division C and that he has given directions that when the same is acted upon it shall be called to his "personal" attention.

CARR.

Carr, keep track of this. F. D.

RICE: Has there been any action taken on this motion as yet?

CARR.

JUNE 20, 1908.

Case will be taken up at once. J. O. S.

JUNE 22, 1908.

PERSONAL.]

JUNE 26, 1908.

MY DEAR JUDGE: In the case of G. S. Kendall v. Minnie S. Long, which was the subject of your letter of May 8, 1908, to Mr. Dennett, and in which case a motion for review was filed by Mr. Langhorne, of Tacoma, as attorney for Long, will say that on the 25th instant the local officers at Olympia were directed to order a hearing, after due notice to all parties, to determine whether or not, prior to August 26, 1907, said Kendall had settled and established residence upon the land involved and was a settler thereon at that date.

A motion for review in the Louise E. Burns-Conover case is now pending and will be considered by the first of next week, when I will write you with regard to it.

Sincerely, yours,

HON. R. A. BALLINGER,
901 Alaska Building, Seattle, Wash.

[Law offices Ballinger, Ronald, Battle & Tennant, Rooms 901-906 Alaska Building, Seattle, Wash.]

MAY 20, 1908.

HON. FRED H. DENNETT,

Commissioner of the General Land Office, Washington, D. C.

MY DEAR FRED: Mr. George L. Neff has called on me on two different occasions respecting patent to lots 23 and 24, the S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of section 17, S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ and SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of section 18, township 9, south of range 10 west, in the Oregon City land district; final receipt issued March 7, 1902, to Edwin A. Haynes, duplicate of which final receipt Mr. Neff has exhibited to me. Mr. Neff is the purchaser of the above-described lands from the entryman and states to me that he has written the General Land Office on two different occasions, April 20 and May 8, and has received no answer to his letters. He is desirous of knowing the status of the claim and what is the reason for withholding patent for so many years. Please see that Mr. Neff is communicated with directly, as it is not necessary to write me in the premises. His address is Ballard, Wash.

With best regards, I remain,

Yours, very truly,

R. A. BALLINGER.

Why were letters not answered? Whose fault? D.

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"P". -9241—J. J.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 27, 1908.

Mr. GEORGE L. NEFF, *Ballard, Wash.*

SIR: I have your letter of May 8, 1908, requesting the status of H. E. No. 13068, made September 25, 1900, by Edwin A. Haynes, for lots 23 and 24, S. $\frac{1}{4}$ SW. $\frac{1}{4}$ of NW $\frac{1}{4}$, sec. 17, S. $\frac{1}{4}$ SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, and NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, and SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, sec. 18, T. 9 S., R. 10 W., and asking to be advised why patent has not issued.

You are informed that said entry was referred on July 18, 1907, to a special agent of the General Land Office for investigation, but no report thereon has yet been received. Your letter of April 20, 1908, was referred to Chief of Field Division Louis R. Glavis, at Portland, Oreg., who will advise you as to how soon a report may be expected in this case. On receipt of such report by this office action will be taken on the entry in the regular order of business.

Very respectfully,

FRED DENNETT, *Commissioner.*

MAY 21, 1908.

Hon. R. A. BALLINGER,
*Care Ballinger, Ronald, Battle & Tennant,
901 Alaska Building, Seattle, Wash.*

MY DEAR JUDGE: Please accept the congratulations of the office on your election as a delegate and chairman of the delegation to go to Chicago. The whole force feels very gratified over the action of the Washington Republicans, especially as it came unsought by you, and merely as a recognition of your strength amongst men who do things.

We are in the midst of hard work here and meet new situations every day, but hope ultimately to make out, so that we will be more authentic than at present. We expect in a few days to put in force the division of the office, as we discussed it before you left. Have the same old trouble with incompetents, but those we will ever have with us. The House gave us the extra \$250,000 for special agents, and the Senate agreed to that item. The bill is in conference on other items, however, but I do not see how we can be prevented, unless they break all precedents, from getting the \$500,000. I am, however, one of those men who never believe they have got a thing until they get it in their hands.

Shirley Parker was indicted by the Utah grand jury, but I have not heard of any warrant being served on him. It is a distressing case.

With best wishes, sincerely, yours,

Commissioner.

[Law offices Ballinger, Ronald, Battle & Tennant, Rooms 901-906 Alaska Building, Seattle, Wash.]

May 22, 1908.

Hon. FRED DENNETT,
Commissioner of the General Land Office, Washington, D. C.

MY DEAR FRED: Judge Hanford yesterday spoke to me respecting the importance of securing title to certain fractions of land in sec. 6, T. 13 N., range 26 E., being lots 4 and 5, and asked me to write you respecting the hastening of the issuance of patent therefor to the Northern Pacific Railway Company so far as possible. I inclose herewith letter received from Mr. Walthew, secretary of the company, giving me the facts as a basis of writing you. I wish you would have this matter looked into at once, and if it is consistent with the condition of the record for the lots to be patented, would appreciate immediate action. In any event please let me know the condition of these lots in so far as their status is concerned, and the probability of issuance of patent at an early date.

I hope to be able to run down to Washington from Chicago to see you after the convention is over and will anticipate meeting you with much pleasure.

With best regards, I remain.

Yours, sincerely,

R. A. BALLINGER

MAY 28, 1908.

MY DEAR JUDGE: Your letter of the 22d instant was duly received. The lands in which Judge Hanford is interested in section 6, T. 13 N., R. 26 E., covered by Northern Pacific selection list No. 110, North Yakima district, have been examined and clear listed and patent will issue within the next ten days.

I expect to be in Chicago during the convention and will look you up upon my arrival.

With best regards, I remain.

Yours, sincerely,

HON. R. A. BALLINGER,

901 Alaska Building, Seattle, Wash.

SEATTLE, WASH., May 29, 1908.

HON. FRED DENNETT,

Commissioner General Land Office, Washington, D. C.

MY DEAR FRED: Capt. A. E. Hanford, of Seattle, formerly of the Booth-Whittlesey-Hanford Abstract Company, and brother of Judge Hanford, called upon me today and complained of the delay in the issuance of patent to certain mineral claims, regarding which he assures me regulations have been fully complied with respecting assessment work, etc. The mineral entry is No. 893, P. file 49245, Spokane district, application 223 (Colville series), Old Glory et al. lode claims. From a letter received by Captain Hanford from Register Cole of the Spokane office, it appears that some one has filed a protest with Dixon, Chief of Field Division, against these mineral applications. The receiver's receipt was issued May 5, 1908. I wish you would have this matter called up and investigated and expedite the issuance of patent so far as consistent with the record. If they are not patented before January next, it will necessitate further assessment work, which, from all the information I received from Captain Hanford would be extremely burdensome and unjust, if he has been acting in good faith, as I am constrained to believe.

I hope to see you by the 11th of next month and will then try to take up with you certain matters in connection with the patenting of some fractions in connection with the Hanford irrigation lands. I have not the data at hand, but Mr. Hughes and Judge Hanford have promised to furnish it to me within the next few days.

I anticipate with much pleasure meeting you in Washington next month. With best regards to all, I remain,

Yours, very truly,

R. A. BALLINGER.

JUNE 15, 1908.

MY DEAR JUDGE: Replying to your letter of the 29th ultimo with reference to mineral application No. 223, survey No. 893, Spokane land district, for the "Old Glory et al." lode claims, in which Capt. A. E. Hanford is interested, will say that the papers in this case are in the office, but action thereon is held in abeyance pending the receipt of a report from Chief of Field Division Dixon, who filed a protest against the same. The record does not disclose the nature of the protest, and by letter of the 9th instant Dixon was directed to make an immediate investigation and report with regard to this application. It will be followed up as soon as received, and you will be advised of the action taken. In the event the mineral entry is allowed and made during the ensuing year it will not be necessary to continue the assessment work thereafter.

Sincerely, yours,

HON. R. A. BALLINGER,

901 Alaska Building, Seattle, Wash.

[R. A. Ballinger, Seattle, Wash.]

AUGUST 18, 1908.

MY DEAR FRED: Mr. John L. Corrigan, who has been in our office for several years, is making application for a refund of purchase money on certain lands in section 23, township 37 S., range 13 E., W. M.

I wish to assure you that Mr. Corrigan is a man of high character and absolutely deserving. I wish you would see that his application is acted on with as much facility as possible.

Yours, very respectfully,

R. A. BALLINGER.

HON. FRED DENNETT,

Commissioner General Land Office, Washington, D. C.

AUGUST 27, 1908.

MY DEAR JUDGE: Your letter of the 18th instant was duly received.

Mr. Corrigan's application for repayment reached the accounts division yesterday. The status of the repayment work is about the same as when you were here, except that it may be ten days or two weeks further in arrears, due to the fact that when any of the adjudicating divisions cancel an entry now on which repayment can be allowed, the papers are sent direct to Division M, instead of being sent to the canceled files to remain until called up by the entryman. I have not been able to assign any additional clerks to the accounts division to bring up the arrearage in this class of work as yet, but hope to be able to afford some relief in this direction in the near future.

Mr. Corrigan's application will be reached for consideration in its regular order in about seven or eight weeks from this time. Of course, if any special reasons exist why it should be materially expedited and he will make a showing with regard thereto, it will be carefully considered.

With best wishes,

Very truly, yours,

FRED DENNETT, *Commissioner.*

Hon. R. A. BALLINGER,
Seattle, Wash.

[Law offices Ballinger, Ronald, Battle & Tennant, Rooms 901-906 Alaska Building, Seattle, Wash.]

AUGUST 21, 1908.

Hon. FRED DENNETT,
Commissioner General Land Office, Washington, D. C.

MY DEAR FRED: I inclose herewith letter from Mr. Haynes, of the Hanford Irrigation and Power Company, asking the restoration to entry of lands therein described.

I would appreciate it very much if you would take this matter up with the Reclamation Bureau, and see if these lands can be restored as requested at an early date.

I anticipate visiting Washington by the middle of September, and will hope to see you at that time.

With best regards, I remain,

Yours, very sincerely,

R. A. BALLINGER.

310 BOSTON BLOCK,
Seattle, Wash., August 21, 1908.

Hon. R. A. BALLINGER,
904 Alaska Building, Seattle, Wash.

SIR: As per our recent conversation, the land withheld from entry by the Reclamation Department lies in Ts. 13 N. 26 E., 13 N. 27 E., and 12 N. 27 E., consisting of fractions of sections which are isolated from any possible developments under the reclamation law.

I think if this were called to the attention of the department that the land will be restored to entry under the regular government regulations. It is possible for all of this land to be irrigated by the extension of the system of the Hanford Irrigation and Power Company, which is the only possible way for the land to be improved.

I will thank you if you will take the matter up with the department at Washington.

Very respectfully, yours,

M. B. HAYNES.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 27, 1908.

MY DEAR JUDGE: I have your letter of the 21st instant, with inclosure from Mr. Haynes, with regard to the restoration of lands in townships 13 N., ranges 26 and 27 E., and township 12 N., range 27 E., which he states consist "of fractional sections which are isolated from any possible development under the reclamation law."

The information given by Mr. Haynes is not sufficient to enable me to identify the particular tracts which the Hanford Company wish to have restored, which tracts, Mr. Haynes states, can all be irrigated by the Hanford Company. I give you the present status of the lands in these townships, for the information of Mr. Haynes, as follows:

Township 12 N., range 27 E.: The whole township was withdrawn December 22, 1905, under the first form; no restorations have been made.

Township 13 N., range 26 E.: Sections 1 to 3 and 10 to 36 were withdrawn December 22, 1905, under the first form, for the North Yakima project. Sections 4 to 9 were restored May 9, 1906. There have been several withdrawals and restorations of the lands in this township, but the above status is as of this date.

Township 13 N., range 27 E.: The whole township stands withdrawn under a first-form withdrawal of December 22, 1905, for the North Yakima project, except lot 1 of section 23 and all of section 24 (east of the river), which stands withdrawn under a second-form withdrawal of June 24, 1903.

It is suggested that Mr. Haynes advise me as to the particular lands (by description) which it is possible for the Hanford Company to irrigate, provided the Reclamation Service will restore them, and I can then take the matter up with the reclamation people. I would also suggest that Mr. Haynes take the matter up with Mr. C. H. Swigart, project engineer at North Yakima, and have him submit a formal report as to the possibility of the lands in question being needed by the Government to the Director of the Reclamation Service. The Reclamation Service here will not act on such a matter until they have received a report from their project engineer. I am informally advised that the Reclamation Service does not contemplate restoring any of these lands at this time. I will be glad to submit the matter upon receipt of definite descriptions from Mr. Haynes.

I expect to be in Washington from now on and will be very glad to see you should you come this way, which I very much hope you will do if at all possible.

With best regards, I remain,

Yours, very sincerely,

FRED DENNETT.

Hon. R. A. BALLINGER,

Seattle, Wash.

SEATTLE, WASH., *August 30, 1908.*

Judge R. A. BALLINGER,

Alaska Building, Seattle.

DEAR SIR: As suggested in letter of August 27, signed by Mr. Fred Dennett, and referred to me:

I have written to Project Engineer C. H. Swigart giving detailed list of the tracts of government land which we are asking to be restored to entry, and requesting him to make a report on the same.

I will notify you upon receipt of reply from him, so that the matter may be followed up.

I return Mr. Dennett's letter herewith.

Thanking you, I am, yours, very truly,

M. B. HAYNES.

SEPTEMBER 25, 1908.

MY DEAR JUDGE: The Secretary gave me Mr. Smith's letter to return to you. The matter was taken up with the Secretary, and the conclusion reached that there is nothing in the Cunningham affidavit which would justify the consideration of the applications under the old act to the exclusion of the new.

There seems to be plenty of "ginger" these days.

Sincerely, yours,

_____, *Commissioner.*

Hon. R. A. BALLINGER,

901 Alaska Building, Seattle, Wash.

SEATTLE, WASH., *October 2, 1908.*

Hon. FRED DENNETT,

Commissioner General Land Office, Washington, D. C.

MY DEAR FRED: The Hanford Irrigation and Power Company have requested me to inquire what steps, if any, are being taken toward the resurvey of township 13 north, of range 23 east, about which I have heretofore conferred with you and in which there is a controversy in reference to certain lots patented to the company. They are on the point of floating bonds to raise revenues to complete their enterprise and are

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anxious to perfect titles to their lands. They are willing, if necessary, to make deposit of the funds necessary to pay the cost of a deputy surveyor officially resurveying the township, in case that would be feasible. It is of the greatest importance that prompt action be taken in this matter, as explained above.

With best regards, I remain, sincerely, yours,

R. A. BALLINGER.

Mr. Du Bois: Please advise me. I notified Carr to have inspection made. F. D.

Honorable COMMISSIONER: We sent out these instructions four days ago, being unable to get a surveyor to the point earlier.

Examiner Harrison completed an assignment in Oregon and we took advantage of this to order him to go to lands, investigate, and report.

Upon his findings we can construct supplemental plats if it be proper to do so.

C. L. Du Bois,
Chief of Division of Surveys.

OCTOBER 7, 1908.

OCTOBER 7, 1908.

MY DEAR JUDGE: Replying to your letter of October 4, will say that we sent out instructions to Examiner Harrison to look into the matter and to investigate and report to us.

Mr. Du Bois says that we can construct supplemental plats upon his findings; that it is proper to do so.

I give you copies of letters of October 3 to surveyor-general at Olympia and to Mr. Harrison, covering instructions.

Best wishes.

Very sincerely, yours,

FRED DENNETT, *Commissioner.*

HON. R. A. BALLINGER,
Seattle, Wash.

[Rose A. Schwinnen, Evelyn L. Miller, Lorenzo D. Rowe, and Robert Dinse, involving prior right of entry of lots 3 and 4 and S. $\frac{1}{4}$ of NW. $\frac{1}{4}$ sec. 5 and SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ sec. 6, T. 25 N., R. 12 W., Seattle, Wash., land district.]

H. 170153-1908.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 5, 1908.

HON. R. A. BALLINGER, *Seattle, Wash.*

MY DEAR JUDGE: In regard to the Rose H. Schwinnen contest case, in which you left a memorandum, will state that I am sorry to say that the contest division has fallen behind, owing to the fact that they have lent so many men for work in land offices and other special details. They are hard at it now and hope to be abreast with the work again by January. The Schwinnen case will therefore not be reached for about eighty days. When so reached, special attention will be given to the features which have been mentioned by you.

Best wishes.

FRED DENNETT, *Commissioner.*

NOTE.—The original letter, the above of which is a copy, to Judge Ballinger from Mr. Dennett shows that it (the original) was press copied.

M. A. RATTEGAN.

[No. 2346. Rose A. Schwinnen, Evelyn L. Miller, Lorenzo D. Rowe, Robert Dinse, claimants. Involving NW. $\frac{1}{4}$ N. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 5, NE. $\frac{1}{4}$ sec. 6, T. 25 N., R. 12 W., W. M.]

BALLINGER, RONALD, BATTLE & TENNANT,
Seattle, Wash.:

Referring to the above case, wish to state that the correctness of the contest clerk's transcript was questioned by Claimants Miller and Schwinnen, and at the request of their attorney, Joseph W. Gregory, the receiver of the Seattle land office ordered said contest clerk to produce his notes for comparison.

Subsequent to June 18, 1908, in one of the rooms of the Seattle land office, appeared Joseph W. Gregory, Contest Clerk Furber, Evelyn L. Miller, and Rose A. Schwinnen for the purpose of comparing transcript, as above stated. After several corrections had been made in cases where transcript did not correspond with notes, and claimants Miller and Schwinnen had proved to contest clerk that they were familiar with his system of shorthand, the question arose as to the omission of a certain answer of claimant Schwinnen. Thereupon claimants Schwinnen and Miller and their attorney, Joseph W. Gregory, asked of contest clerk that he hand over his notebook for investigation, which he refused to do.

The omission referred to occurs just before the close of Attorney Abel's cross-examination of Rose A. Schwinnen and, as near as can be remembered, is as follows:

Q. Didn't you spend a great deal of your summer of 1903 at Fletcher's?

A. I told you that sometimes we would go out there after supplies and would stay a night or two. I met you at Mr. Fletcher's table, don't you remember, Mr. Abel, and I told you all about this case, and you said that Aberdeen gang were a hard lot to fight and that they would swear to lies, don't you remember, Mr. Abel?

ABEL. Why, no; I don't remember; I don't remember.

SCHWINNEN. I shouldn't think you would.

Also another omission occurring in testimony of Lorenzo D. Rowe, Attorney Gregory's cross-examination.

ROWE. I didn't have any house.

GREGORY. You sent money to have one built, didn't you?

ROWE. Yes.

Referring to that part of Seattle land office decision, explaining delay in rendering decision, would call attention to copy of letter attached, received from receiver by Miss Miller, while at her home at Hoh, which letter is self-explanatory.

Respectfully submitted.

ROSE A. SCHWINNEN.

[Rose A. Schwinnen, Evelyn L. Miller, Lorenzo D. Rowe, and Robert Dinse. Homestead applications Nos. 0386, 0387, 0388, and 0389, Seattle.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 1, 1910.

HONORABLE COMMISSIONER GENERAL LAND OFFICE.

SIR: I have the honor to report that the record relating to the above-named conflicting homestead applications has been searched, and no copy of a letter addressed to the Hon. R. A. Ballinger (in answer to the attached memorandum left by Mr. Ballinger at this office on September 23, 1908) was found with the other papers. I am unable to find any record of any letter written to Mr. Ballinger on the subject.

All the papers in the case were on May 26, 1909, withdrawn from this division by Special Agent Louis R. Glavis. It does not appear on what date they were returned to the files.

Respectfully,

JOHN P. McDOWELL,
Chief of Division H.

SEATTLE, WASH., October 14, 1908.

MY DEAR FRED: I see by a newspaper special from Valdez that there is a prospect of a division of the third district at the next session of Congress. I wish you could find out the status of the pending bill and advise me as to the prospect of it passing, as far as you can. I will also want you to assist me in getting the appointment, in case of a division, of Mr. John Stringer as marshal for the new division. I would like to have you keep me posted regarding this matter, because I am very anxious that Mr. Stringer should secure the appointment if it is possible, and any suggestions or advice you can furnish will be appreciated.

Sincerely, yours,

R. A. BALLINGER.

HON. FRED DENNETT,
Commissioner General Land Office, Washington, D. C.

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DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 20, 1908.

Mr. GEORGE BOYD,
Superintendent Document Room, U. S. Senate.

MY DEAR GEORGE: Can you send me a copy of the bill dividing the third judicial district of Alaska; also such reports as may be made on the bill and notification of present status thereof?

Best wishes.

FRED DENNETT, *Commissioner.*

Personal.]

SEATTLE, WASH., November 2, 1908.

Hon. FRED DENNETT,
Commissioner General Land Office, Washington, D. C.

MY DEAR FRED: In 1867 Edward Giddings, surveyor-general of Washington Territory, prepared for the legislative assembly a map of Washington Territory showing the county boundaries. The original of this map was undoubtedly destroyed in the fire which occurred many years ago, destroying the surveyor-general's office. It is probable that a copy of this map was sent by the surveyor-general to the Interior Department. If it could be found, it would probably be determinative of certain important litigation now pending in the courts of the State of Washington.

I will appreciate very much your giving this matter your personal attention, and if the map can be found would like to have a certified copy forwarded to me as early as possible.

Sincerely, yours,

R. A. BALLINGER.

[Telegram.]

4-394. "A."]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 7, 1908.

R. A. BALLINGER,
Alaska Building, Seattle, Wash.:

Washington map, eighteen sixty-five, Giddings, surveyor-general, on file. No map sixty-seven. Also manuscript map, Garfield, surveyor-general, sixty-eight, showing changes.

DENNETT, *Commissioner.*

(Collect. W. U.)

Official business. Government rate.

[Telegram.]

SEATTLE, WASH., November 9, 1908.

Hon. FRED DENNETT,
Commissioner General Land Office, Washington, D. C.:

Please forward immediately certified copies all Washington maps referred to in your answering message November 7. Will remit cost.

R. A. BALLINGER.

[Telegram.]

4-394. "A."]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 9, 1908.

R. A. BALLINGER,
Alaska Building, Seattle, Wash.:

Maps forwarded to register to exhibit in court; subpoena circular by letter; certified copies impossible under three or four weeks.

DENNETT, *Commissioner.*

Official business. Government rate.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 10, 1908.

HON. R. A. BALLINGER,
Alaska Building, Seattle, Wash.

MY DEAR JUDGE: Your letter of November 7 in regard to Washington Territory maps received. To prepare certified copies of the maps would have taken, so Bond says, from two to three weeks. I judged that you are in a hurry for this and, therefore, came to the conclusion that the best thing to do would be to send them to Smith, so that you could subpoena Smith, and he can produce the maps for examination by the court. This has been done, and I trust it will meet the situation.

Everything is moving along here fairly well. The inauguration of the new system has, however, taxed the elastic powers of the bureau to a considerable extent. I am glad to state that the boys have met the situation, and in a month or two I suppose we will be proceeding along on an even keel.

Best wishes.

FRED DENNETT, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 2, 1908.

HON. R. A. BALLINGER, *Seattle, Wash.*

MY DEAR JUDGE: Inclosed is a copy of a letter which I am writing to members of the Senate and House committees on Public Lands, Appropriations, and various other Senators and Representatives who are likely to be interested in the work which has been done in this office. I hope this will be satisfactory to you.

With regard to the Hawkins entries, without making them actually special, it was seen that there was no delay in issuing patents. You will remember that you rejected an application to make special on almost identically the same grounds, so that I had a precedent to overcome had I made them special, which I concluded to be of paramount authority! However, the same result was obtained and the patents have been received before this. I hope everything will be satisfactory.

I did not go out to vote for the reason that I felt that I could do more good by staying at the helm and holding things as even as possible. You will notice that there has been very little criticism during this campaign of the Land Office, and yet there are several things that came up just prior to election that could easily have gone wrong. It has been a strange experience to me not to be in a Presidential campaign, as this is the first I have been out for nearly twenty years, but I hope that my absence from active participation in the field work connected with the campaign will be properly understood. Best wishes to you and all.

Very truly, yours,

FRED DENNETT, *Commissioner.*

[Telegram.]

SEATTLE, WASH., October 8, 1908.

HON. FRED DENNETT,
Commissioner General Land Office, Washington, D. C.

Replying your message to Humphrey, 3d instant, T. P. Sanders successor in interest of Samantha and James H. Hawkins, T. and S. entries subject to heavy forfeiture by contract unless patent issue without delay. Make special if possible and wire when patent will issue.

R. A. BALLINGER.

[Telegram.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 9, 1908.

R. A. BALLINGER, *Seattle, Wash.*

Hawkins timber and stone entries suspended awaiting report agent on alleged coal character of land. Have telegraphed to Seattle office asking if contest filed against these cases.

DENNETT, *Commissioner.*

[Telegram.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 17, 1908.

R. A. BALLINGER, *Seattle, Wash.:*

Supplemental report called for by wire in Hawkins's timber and stone entries.
Dodd's report not satisfactory.

DENNETT, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 4, 1908.

Hon. R. A. BALLINGER,
Alaska Building, Seattle, Wash.

MY DEAR JUDGE: Your letter of the 29th received. I thought that you would infer from the telegram of the 22d, "Hawkins's timber and stone entries taken up for consideration this date," following on the information that all we were waiting for was a complete report from Miner Dodds, which you furnished, that the cases would be pushed and patents issued in the course of a few days. On the 24th, as I wrote you, the patents did issue and must have reached the local office on the same date that you wired. We could not have put through these cases any more rapidly than they were sent through, so that I could not have gotten them out before Mr. Saunders was compelled to go to Alaska. I trust, however, that everything is all right now and that you received my wire of the 30th telling you that patents had been sent on the 24th. The country is once more saved and it is to be hoped that everything will take an upturn.

Best wishes;

FRED DENNETT, *Commissioner.*

SEATTLE, WASH., October 11, 1908.

Hon. FRED DENNETT,
Commissioner General Land Office, Washington, D. C.:

Amend wire of 8th to include T. & S. entries of W. G. and J. A. Hawkins. P. Smith, special agent, clear listed all in report to you through Dickson, September 1.

R. A. BALLINGER.

[Telegram.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 20, 1908.

R. A. BALLINGER, *Seattle, Wash.:*

Hawkins's timber and stone entries will be reached for consideration in about thirty days.

DENNETT, *Commissioner.*

[Telegram.]

SEATTLE, WASH., October 29, 1908.

Hon. FRED DENNETT,
Commissioner General Land Office, Washington, D. C.:

Please wire action taken in Hawkins timber and stone entries.

R. A. BALLINGER.

[Telegram.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 30, 1908.

R. A. BALLINGER, *Seattle, Wash.:*

Patents on Hawkins entries transmitted October 24.

DENNETT, *Commissioner.*

[Telegram.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 16, 1908.

HON. R. A. BALLINGER, Seattle, Wash.:

Department of Justice will not take up matter in advance of regular application properly submitted.

Commissioner.

Personal.

SEATTLE, WASH., November 16, 1908.

HON. FRED DENNETT,
Commissioner of General Land Office, Washington, D. C.

MY DEAR FRED: I am in receipt of yours of the 10th instant, notifying me of the Washington Territory maps and your action respecting the same, which I very much appreciate. I also received your telegram respecting the same matter. I had no personal interest in this request, but have acted for Mr. Harold Preston, who had urgent use for the data asked for.

I am glad to know you are getting along so well and that everything is moving satisfactorily. If I can be of any service to you in the matter of your reappointment, you will not, of course, hesitate to command me. I shall write to Mr. Garfield my views in this respect at the first opportunity.

I wired you Saturday as follows: "Parker sentenced four months county jail Salt Lake. Please see Bonaparte whether executive clemency would be recommended by him. Wire." And received your reply as follows: "Bonaparte out of town."

The inspiration for my telegram was a long letter from Mr. Critchlow, of Salt Lake, who appeared for Shirley D. Parker, who pleaded guilty, and the sentence was considered too severe, under the circumstances. Mrs. Larson is crushed by the result. This letter I speak of from Mr. Critchlow asked me to use my best endeavors to secure a pardon or executive clemency in some form. I, of course, thought the best way to reach it was to see whether or not the Attorney-General, in view of all the facts which were within your knowledge, would be disposed to recommend executive clemency. It is useless for me to try to secure a petition here unless the Attorney-General would look favorably upon it. I can get a very large petition of reputable people, if necessary. I have refused, and still refuse, to accept any compensation whatever or retainer in connection with the case, and have been prompted in my action thus far purely out of sympathy for the mother and regret at the boy's conduct and hope for his future. I have asked Critchlow to secure the recommendation of United States Attorney Booth at Salt Lake. I know you feel as I do respecting this matter, and it is of course a question how far one can with propriety intercede in such cases.

Please remember me to the boys, and with best regards, I remain,

Yours, very sincerely,

R. A. BALLINGER.

NOVEMBER 28, 1908.

MY DEAR JUDGE: Excuse the delay in answering your letter of the 16th.

I have submitted all the Parker papers to the Secretary. I do not think that I have ever had anything affect me like this Parker case. Mrs. Larson, his mother, must be a wonderfully fine woman, and her letters have been so tolerant that they have been impossible to answer. I could not recite to her what Parker did. I could not tell her that in one case he charged, according to our evidence, where no services were performed, or that in another case where he hired a team, buggy and driver, he so stated in his voucher, and raised the charge \$1, stating that he had in addition a saddle. I could not tell her these things, because I should be loath to try to break down the faith and belief that she has in her boy. It would be too cruel a thing for me to undertake. Personally, I wish that the judge had given him a shorter sentence. If he had given him a month or two the effect would have been the same; but the sentence once given it would be difficult to solve the question as to where the greater damage would be done. If he be pardoned out it would cause people whom we are prosecuting to say that whilst we go after them relentlessly when one of our own employees gets into trouble we see that after punishment is inflicted he is pardoned out before he has satisfied the judgment. All these things have to be

weighed, and you will naturally see are causing great trouble. I have little sympathy for Parker, but I certainly have a great admiration and great sympathy for his mother. I doubt whether a boy with his ideas ever should be admitted to practice or allowed to accept a trust position, although I may be entirely wrong in my judgment.

Many thanks for your offer to write to Garfield. Personally, I do not know what is going to happen here. I have told the Secretary that I shall not endeavor to bring any pressure to bear on Mr. Taft; that I do not want this position feeling that I am under obligations to gentlemen in Congress with whom I may have to come into a position of antagonism. I have expressed this sentiment to you before. What the Secretary wants, of course, I can not tell, but I should be loath to try and persuade him one way or the other. He ought by this time know what work we are doing and what we can do.

I am in hopes that the administration will not be able to get along without you in a Cabinet position. If I am going to be here for another four years it certainly would be a source of everlasting joy to me to have you where I could reach you and consult with you. Of course, Hitchcock in the Post-Office is a great bulwark, but his work will not come intimately in connection with mine.

Let me know if there is anything here that I can do for you.

With best wishes,
Sincerely, yours,

Hon. R. A. BALLINGER, *Seattle, Wash.*

NOVEMBER 18, 1908

MY DEAR JUDGE: Your telegram received and answered by my telegrams of Saturday and Monday. The Department of Justice refuses to take up any application unless it be presented in the usual form. They will demand the approval of the local United States attorney and of the presiding judge.

I took it up briefly with Secretary Garfield, and he was against the idea of executive clemency. The point as he takes it is simply this: Parker's actions were known in three States—the eastern part of Washington, Idaho, and part of Utah. You know nothing travels so quickly as the errors of a government officer. If pardon be extended to Parker, then those who have violated the land laws will find cause to say, "You prosecute us, but when one of your own men slips you condone him." This must be very tough on Mrs. Larson, who must be a splendid woman, but you can see the departmental side to it.

With best wishes,
Very truly, yours,

Commissioner

Hon. R. A. BALLINGER, *Seattle, Wash.*

[Law offices Ballinger, Ronald, Battle & Tennant, rooms 901-906 Alaska Building, Seattle, Wash.]

Personal—In re coal entry of W. G. Whorf, Juneau, survey 315.

DECEMBER 11, 1906.

Hon. FRED DENNETT,
Commissioner of General Land Office,
Washington, D. C.

MY DEAR FRED: Mr. W. G. Whorf, of Port Graham, Alaska, has just called upon me and presented a condition of the record respecting his coal entry at Port Graham, which is somewhat out of the ordinary.

It appears from a letter dated December 5, 1908, from the register and receiver of the local land office at Juneau, addressed to J. L. Reed, United States commissioner, Seward, Alaska, that the local office has refused to accept a copy of location notice and application for patent, on the ground that the same was not filed within the year from the time of entry, the circumstances being that the entryman did all he could in order to transmit the necessary papers to the local land office by making out his notice in proper form and his declaration, and having them transmitted through the United States post-office by H. H. Hildreth, then commissioner of the Cook Inlet precinct, but they appear to have been lost in the mail. I inclose you a copy of the letter last referred to of the local land office. I also inclose to you affidavit of H. H. Hildreth, commissioner, as above recited, setting forth the facts relating to the mailing of said notice and declaration, which was within the year required by the regula-

tions, and also the affidavit of W. G. Whorf, setting forth the facts in connection with the entry of his claim, character of the claim, amount of development, and the amount of moneys spent upon the development of the claim and improvements in connection therewith, which recites the facts in full in all these particulars.

The delay incident to an appeal from the refusal of the local officers to accept these papers and file them nunc pro tunc as of the date when they should have been received if properly transmitted through the mails, and the consideration of such appeal, in view of the remoteness of the land office, constrains me to write you direct in reference to this matter, and request that, in view of the circumstances, the local officers at Juneau be instructed, if you find the record justifies it, to accept for filing the notice of location, as well as the declaration, of Mr. Whorf. If this can not be considered by the department in this way and upon the papers herewith inclosed, please wire me the conclusion you arrive at in this respect, so that, if an appeal is absolutely necessary, it may be prosecuted without delay.

I am informed that Special Agent Love has reported upon this entry favorably, and I am also informed that there is no contest whatever or adverse claim which would warrant the department holding the matter up for consideration in this respect. My information respecting this entry and the bona fides of it is to the effect that the entryman has proceeded in the utmost good faith in everything that has been done in connection with the same.

I will appreciate your immediate and personal attention to this matter. In case you decide that an appeal is necessary, please return the inclosed papers.

Yours, very respectfully,

R. A. BALLINGER.

"N"—C. C. H.—4—394.—Telegram.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 16, 1908.

R. A. BALLINGER, *Seattle, Wash.*

Register and receiver, Juneau, Alaska, advised by letter to allow W. G. Whorf coal application. Copy by letter.

DENNETT, *Commissioner.*

Charge G. L. O.

"N"—C. C. H.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 17, 1908.

HON. R. A. BALLINGER, *Seattle, Wash.*

MY DEAR JUDGE: Referring to your letter of December 11, 1908, and my telegram of to-day, relative to case of W. G. Whorf, coal survey 315, I inclose herewith copy of my letter to the local land officers at Juneau, Alaska. Unless you desire them returned, I shall retain the affidavits you inclosed for filing with the record when it reaches this office.

Very respectfully,

FRED DENNETT, *Commissioner.*

[In reply please refer to Juneau Coal Land Survey 315 "N" C. C. H. 2 Ex. R. A. Ballinger. C. C. H.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 17, 1908.

REGISTER AND RECEIVER, *Juneau, Alaska.*

SIRS: This office is in receipt of a copy of your letter of December 5, 1908, addressed to J. L. Reed, esq., United States commissioner, Seward, Alaska, refusing to receive and file the application for patent of Mr. W. G. Whorf, for the "Port Graham" coal claim, survey 315, on the ground that the notice of location of the claim was not filed in your office within one year from the date of making the location, as prescribed by section 1 of the act of April 28, 1904 (33 Stat., 525).

There have been filed in this office affidavits which show that the claim was located in good faith February 13, 1905; that April 26, 1905, there was filed with the recorder of the Seward recording district, Alaska, two copies of the location notice of said

claim, one to be recorded there, the other to be forwarded to your office for filing; that one was actually recorded and the other forwarded to your office; that the latter notice was evidently lost in the mails.

It also appears that the claimant has made large expenditures in the direction of developing the claim.

Judging from the showing made, the claimant has acted in entire good faith. The failure to file the notice of location in your office within the time prescribed by the statute was evidently not his fault, and the matter is one not susceptible of correction by him.

In view of the fact that the notice was duly recorded with the district recorder, where parties having interests in that locality would likely look for notices of conflicting claims, and of the fact that the claimant under the law must publish and post notices of his application for patent, I can not see how anyone could be injured by permitting him to file this notice nunc pro tunc and thereafter proceed with his application for patent.

Accordingly, if there is no other objection to the allowance of the application, you will proceed as herein indicated.

Very respectfully,

FRED DENNETT, *Commissioner.*

BOARD OF LAW SERVICE,
By E. C. FINNEY.

DEPARTMENT OF THE INTERIOR,
Washington, December 18, 1909.

There was absolutely nothing irregular or unusual in this matter. We (the General Land Office) did just what we would do in any such case if it had been called to our attention by the claimant or any other person. The action taken was simply for the purpose of permitting the man's claim to be filed in the local land office, and to give the notice required in all such cases; did not in any way preclude investigation as to the validity thereof by the land officials or the filing of objections thereagainst by individuals.

FINNEY.

FEBRUARY 9, 1909.

MY DEAR JUDGE: Some New York parties to-day approached me with the suggestion that I should go on the directorate of a \$12,000,000 corporation which is being formed along the lines of the insurance business. The representation is made to me that \$6,000,000 will be raised immediately and given over to my friends to be handled along lines which are somewhat original. The corporation will be, of course, in every respect a legitimate one and will be connected with people of high standing and good monetary institutions. It is not necessary for me to make up my mind immediately. Of course, the matter may not materialize, but before acting one way or the other I wanted to seek your advice and ask you this question: If you recommend my reappointment to Mr. Taft and Mr. Taft acquiesces and reappoints me, would my becoming associated, as director, in this institution, in any way embarrass? This, of course, is very confidential, but I would like you to let me know, so that I may be governed in case the matter materializes.

With best wishes,

Sincerely, yours,

Hon. R. A. BALLINGER,
Seattle, Wash.

Mr. BRANDEIS. Now, I will ask you whether Mr. Dennett ever told you that Mr. Ballinger had drafted the Cale bill?

Mr. GARFIELD. He did not.

Mr. BRANDEIS. You stated that the first knowledge which you had of the Cunningham cases, specifically, as distinguished from the general coal situation in Alaska, was when the Cunningham journal, which Glavis had obtained, was called to your attention in March or early in April, 1908?

Mr. GARFIELD. That is as I remember it.

Mr. BRANDEIS. What was the first date at which you were called upon to do anything, other than that mere conference and a dis-

cussion of the questions in connection with the legislation which you have already detailed to the commission?

Mr. GARFIELD. Well, I do not know that I can recall specifically the date, Mr. Brandeis, as to that, but it was at or soon after the time the matter was brought to my attention that we were discussing the special coal-land legislation.

Mr. BRANDEIS. Well, now were you at any time called upon to act specifically on the question of the issuance of that patent?

Mr. GARFIELD. I do not recall that the matter was ever presented to me specifically.

Mr. BRANDEIS. Was it not presented to you by Mr. Ballinger himself?

Mr. GARFIELD. Oh, I thought you referred to the spring of 1908.

Mr. BRANDEIS. There was nothing in the spring?

Mr. GARFIELD. Nothing in the spring of 1908. In the fall of 1908, in the middle of September, Mr. Ballinger did present to me an affidavit specifically referring to the Cunningham claims.

Mr. BRANDEIS. Now, that was after Mr. Ballinger had resigned from his position as commissioner, and while he was practicing law in the interval between his acting as commissioner and his becoming Secretary of the Interior?

Mr. GARFIELD. It was at that time.

Mr. BRANDEIS. Now, will you state how this interview with Mr. Ballinger in September came about?

Mr. GARFIELD. Mr. Ballinger telegraphed me that he desired to confer with me about some departmental business, and in answer to my telegram he came to Mentor and presented to me this affidavit.

Mr. BRANDEIS. That is, he came to your home in Ohio?

Mr. GARFIELD. Yes, sir.

The CHAIRMAN. Whose affidavit was that?

Mr. BRANDEIS. That is the affidavit signed, I believe, by Clarence Cunningham.

I would like to ask Mr. Sleman whether that original affidavit has been furnished. We have called for that affidavit.

The CHAIRMAN. Mr. Sleman is not in, but as soon as he comes we will ask him.

Mr. BRANDEIS (after the return of Mr. Sleman). Mr. Sleman, has the original affidavit of September 4, 1908, of Clarence Cunningham been supplied?

Mr. SLEMAN. Yes, sir.

Mr. BRANDEIS. Will you kindly get it for me?

Mr. SLEMAN. Yes; I will be glad to get it.

Mr. OLMSTED. That is printed in the record?

Mr. BRANDEIS. It is printed, but we only had a copy of it before

The CHAIRMAN. And it is in the record already?

Mr. BRANDEIS. There is a copy in the record, but there is some special reference to the form of that document itself that I want to bring out.

Now, will you go on, Mr. Garfield, while we are waiting for that affidavit, and state what occurred at that interview? In the first place, are you able to fix the date of the interview?

Mr. GARFIELD. The date, I think, is the 17th of September.

Mr. BRANDEIS. 1908?

Mr. GARFIELD. 1908. Mr. Ballinger presented the affidavit stating that, as he was coming East, some friends of his desired him to present this affidavit to me in reference to the Cunningham claims. The general purport of the conversation was as follows: I told him that as to those claims I considered them illegal, and as the information that the department now had was a report of Glavis on the Cunningham journal, I was satisfied that the claims were illegal. I then read over the affidavit which he handed me, and I told him that I did not think that that made any difference to the claims. He then stated that he had been requested to leave this, and he wished to file it for what it was worth. I told him that it would be filed; I would send it to Washington for consideration and have the office consider it, and see what conclusion might be reached therefrom. He left with me the impression that it was in the nature of a casual matter of filing this affidavit with me for the persons whom he knew in Seattle, and was representing them in that casual way.

Mr. BRANDEIS. Did Mr. Ballinger state at that time that he appeared as counsel for him?

Mr. GARFIELD. He did not, except in the manner that I have indicated.

Mr. BRANDEIS. Was this subject of the Cunningham affidavit the main subject of your interview?

Mr. GARFIELD. No; there were other matters that he brought to my attention at that time.

Mr. BRANDEIS. Another matter in the Land Department?

Mr. GARFIELD. There was another matter in the Indian Department.

Mr. BRANDEIS. How long was Mr. Ballinger with you?

Mr. GARFIELD. He was there with me during the afternoon of that day.

Senator FLETCHER. Did he name the persons for whom he appeared?

Mr. GARFIELD. He did not. There was no discussion about that. As I stated, my impression was that it was something of a casual thing that he was asking, and they had asked him to leave this with me.

Mr. JAMES. Did he or not refer to the Cunningham claims directly?

Mr. GARFIELD. Yes. The affidavit referred to the Cunningham claims, and I then made answer to him, as I have indicated, that I considered them illegal and did not think that the affidavit made any difference with me.

Mr. BRANDEIS. The affidavit already appears in evidence and is in the list of papers in the chronological list. I desire to have also appear in the record the indorsement on this affidavit, which reads: "Affidavit of Clarence Cunningham. Ballinger, Ronald, Battle, and Tennant, attorneys at law, Alaska Building, Seattle, Wash."

Did you at that time, Mr. Garfield, notice that Mr. Ballinger's firm appeared as counsel?

Mr. GARFIELD. I did not. If I noticed it, it made no impression upon my mind.

Mr. BRANDEIS. Now, I call your attention, Mr. Garfield, to the following passage in that affidavit, which appears in the chronological list on page 135, which is as follows:

In addition to the statements set forth in that certain affidavit made by affiant, dated the 6th day of March, 1908, before L. R. Glavis, chief field division, G. L. O., affiant further states he knows of no individual entryman in said group of entries that has any contractual obligation of any nature whatsoever with the Guggenheim syndicate, or any other syndicate or corporation whatsoever, or any of their agents, whereby his claim or entry or any part thereof is disposed of or to be disposed of, incumbered or otherwise pledged in any sense whatsoever.

I will ask you, Mr. Garfield, whether that passage in the affidavit was the subject of any discussion between you and Mr. Ballinger?

Mr. GARFIELD. No, it was not; as I remember.

Mr. BRANDEIS. Did you have before you at that time the March 6 affidavit which is therein referred to?

Mr. GARFIELD. I did not. I had no files with me at home.

Mr. BRANDEIS. And Mr. Ballinger, so far as you can remember, did not present that affidavit?

Mr. GARFIELD. I think not; nothing of that kind.

Mr. BRANDEIS. You have examined the March 6 affidavit?

Mr. GARFIELD. I have, since that time.

Mr. BRANDEIS. And I call to your attention—it appears on page 88 of the list of orders—to the following passage in that affidavit [reading]:

The Guggenheim syndicate, which has been contemplating building a railroad to our coal fields, is not directly or indirectly interested in the said coal lands and they have never been interested.

The CHAIRMAN. That is in the Cunningham affidavit?

Mr. BRANDEIS. That is in the original Cunningham affidavit of March 6. And then again, in the same affidavit, on page 89, appears the following [reading]:

Not only have the Guggenheim interests had nothing to say regarding our coal lands, but no other corporation has had anything to do with it. We have had no written agreement whatever with any corporation, and the only understanding which we have had is that among ourselves.

Was anything whatever said by Mr. Ballinger bearing upon that specific thing or that statement?

Mr. GARFIELD. There was not.

Mr. BRANDEIS. Now, I call your attention, Mr. Garfield, to the copy of the contract, or the original option, dated July 20, 1907.

The CHAIRMAN. That is not in evidence yet?

Mr. BRANDEIS. No; I am calling his attention to it; I want to ask him about it. Between A. B. Campbell, M. C. Moore, and Clarence Cunningham, for themselves and as committee representing their associates with Daniel Cunningham—

Mr. GRAHAM. Guggenheim.

Mr. BRANDEIS. Daniel Guggenheim. Which was put in evidence at the hearing before the Committee on Territories, on February 18, 1910, and the acceptance of that option under date of December 7, 1907, by Daniel Guggenheim, which also appears in the report of the hearing before the Committee on Territories. I will call your attention to this telegram appearing on page 84, and ask you whether anything was said to you by Mr. Ballinger in any way in regard to that contract?

Mr. GARFIELD. There was not.

Mr. BRANDEIS. When did you first learn of the existence of that contract?

Mr. GARFIELD. After the hearing to which you have just made reference.

Mr. BRANDEIS. That is after the hearing before the Committee on Territories of February 18, this year?

Mr. GARFIELD. Yes, sir.

Mr. BRANDEIS. Now, I call your attention to the memorandum—

Mr. OLMSTED. Let me ask you a question. Did you learn it from the report of the hearings before the committee?

Mr. GARFIELD. I did.

Mr. OLMSTED. And not in any other way?

Mr. GARFIELD. Not in any other way. That is the first I knew of it.

Mr. BRANDEIS. That is the printed report or the newspaper report?

Mr. GARFIELD. First the newspaper report, and then a printed copy of the hearing.

Mr. BRANDEIS. I call your attention to the memorandum of Mr. Schwartz of September 23.

The CHAIRMAN. What page is that?

Mr. BRANDEIS. Just a minute. That is on page 138 of the list of orders, of September 23, 1908. Had you at that time—September 23, 1908—returned from West Mentor to Washington?

Mr. GARFIELD. I think so.

Mr. BRANDEIS. Had you previously sent to Washington this Cunningham affidavit?

Mr. GARFIELD. I had. I sent it to my secretary, Mr. Brown, with instructions to take certain acts in regard to it.

Mr. BRANDEIS. In that letter to Mr. Brown which appears on page 137 of the list of orders, the letter of September 7, you say:

The inclosed affidavit in the Cunningham Alaska coal cases is to be filed in land office, and direct Dennett to go over it carefully and bring to my attention on my return. No action to be taken till I come.

Mr. GARFIELD. That is the memorandum.

Mr. BRANDEIS. Why did you give that direction?

Mr. GARFIELD. Because I stated to Mr. Ballinger that the affidavit would be considered by the department, and I sent it on for the purpose of having the Land Office consider it.

Mr. BRANDEIS. Now, to return then to the memorandum of Mr. Schwartz, or the letter of Mr. Schwartz to the Commissioner, of September 23, which appears on page 138, and which states [reading]:

I have considered carefully the attached affidavit by Clarence Cunningham. It is ingenious, but not convincing, although the showing is ex parte and made after several weeks' very careful consideration by Cunningham and his attorneys.

That memorandum or its contents was called to your attention?

Mr. GARFIELD. It was.

Mr. BRANDEIS. And in pursuance of that, and the conference which you had, was any action taken?

Mr. GARFIELD. So far as I am concerned I can not recall that any definite action was taken by me. The records will show if there was any such action; but it verified my own impression of the affidavit regarding the Cunningham claims.

Mr. BRANDEIS. I now call your attention to the following letter which has already been introduced in evidence as a part of the file of letters from Mr. Dennett to Mr. Ballinger during the year he was out of office.

The CHAIRMAN. That is one—

Mr. BRANDEIS. One of the new letters; it does not appear yet in the printed record.

The CHAIRMAN. Give the date of it.

Mr. BRANDEIS. September 25, 1908.

The CHAIRMAN. To whom?

Mr. BRANDEIS. By Commissioner Dennett to Mr. Ballinger [reading]:

MY DEAR JUDGE: The Secretary gave me Mr. Smith's letter to return to you. The matter was taken up with the Secretary and the conclusion reached that there is nothing in the Cunningham affidavit which would justify the consideration of the application under the old act to the exclusion of the new.

There seems to be plenty of "ginger" these days.

Sincerely yours,

Commissioner.

HON. R. A. BALLINGER,
901 Alaska Building, Seattle, Wash.

Now, what was the next thing, so far as you know, if anything, that you had to do with the Cunningham cases?

Mr. GARFIELD. I do not recall that I had anything thereafter to do with the cases. It was my intention that they would be cared for in the ordinary course and come up either for hearing or would be canceled by the action of the department directly.

Mr. BRANDEIS. I now call your attention to another memorandum or letter of Mr. Schwartz, appearing, Mr. Chairman, on page 143 of the list. It is Mr. Schwartz's letter of December 16, 1908, and I specifically call your attention to that paragraph of the letter which is as follows [reading]:

We have pending about 500 coal entries; every man on the coast who knows anything knows the Guggenheims do and will control the coal situation unless at once forestalled; the act of May 28, 1908, limits its consolidation benefits to entries already made (Guggenheim and two or three other corporations), and so shuts out future competition. Exhibits show the coal in from 20 to 80 feet width blankets of clear coal. The 500 entries have, say, 80,000 acres. At 10 cents a ton on 20-foot vein, the royalty alone is \$160,000,000.

Suppose in five or ten years Guggenheim shall have acquired control of these lands. Will it be charged to Secretary Garfield and Commissioner Dennett? And will Congress be able to say—as it can in the timber and stone act—that the department has taken the first paragraph of the act of May 28, 1908, and in effect changed "may consolidate" to "who have heretofore consolidated;" and when the act says that for the purpose of consolidating (bona fide claims) persons "may form * * * corporations" we have in effect said that corporations heretofore formed, and having heretofore consolidated claims by taking unlawful assignments, may now make final proof and get a patent unless a special agent can jimmy into the inner consciousness of these entrymen and compel them to admit, in words, they were dummies from the first.

Now, I ask you, Mr. Garfield, whether that memorandum to Mr. Woodruff was called to your attention, as far as you can remember?

Mr. GARFIELD. I do not remember that it was; very probably it was, though.

Mr. BRANDEIS. Or do you remember specifically whether any of the facts with regard to the Guggenheim connection which have appeared before the Committee on Territories in connection with that option of July 20, accepted December 7, 1907—whether any of those facts were brought to the attention of yourself, or in anyway came to the knowledge of your office, so far as you know?

Mr. GARFIELD. I do not recall any specific reference such as is made in that letter.

Mr. BRANDEIS. It has appeared here in evidence that on May 2, 1908, Mr. Glavis was directed by a telegram from Commissioner Dennett to suspend his investigation of the Alaska coal claims. Do you recall whether you were conferred with at that time specifically in that matter?

Mr. GARFIELD. I do not recall, Mr. Brandeis.

Mr. BRANDEIS. Now, it also appears in evidence that on October 7, 1908, by a letter from Mr. Schwartz to Mr. Glavis, Mr. Glavis was directed to resume the investigation which had been suspended on account of the legislative proceedings, and on account of the state of business in that division. Do you remember whether you were consulted in regard to the resumption of the investigation which Mr. Glavis was directed to make at that time?

Mr. GARFIELD. I do not recall it, and I think it would have been unusual, as those were matters wholly within the jurisdiction of the Land Office.

Mr. BRANDEIS. You knew Mr. Glavis?

Mr. GARFIELD. Yes; I had met him.

Mr. BRANDEIS. What did you know of Mr. Glavis and of his competency and faithfulness in the performance of his duties, and as to his reliability?

Mr. GARFIELD. I knew him first from the record he had made as an officer of the Land Department. Later, when he was appointed, or soon after being appointed, to the chief position in the Portland district, I believe he was in Washington. I saw him at that time and discussed with him, as I did with the other agents as they came in their work, and the work in the field. I considered him, both from the record he had made and from my knowledge of him, as one of the cleanest, ablest officers in the service.

Mr. BRANDEIS. Just one other question, Mr. Garfield, in connection with the statement quoted from the affidavit of Cunningham of March 6, 1908, of the supplemental or explanatory affidavit of September 4, 1908, presented to you by Mr. Ballinger. I ask you whether those passages which were read to you and considered appeared to you to be consistent with the existence of the agreement between Daniel Guggenheim or the Guggenheim syndicate and the Cunningham claimants that have been referred to.

Mr. GARFIELD. It seemed to me to be wholly inconsistent.

Mr. BRANDEIS. That is all.

The CHAIRMAN. Mr. Vertrees, you may proceed.

Mr. VERTREES. Mr. Garfield, how long have you known Mr. Ballinger?

Mr. GARFIELD. Since we entered Williams College; in 1882 I think he came. I have known him since he entered.

Mr. VERTREES. You and he attended the same college?

Mr. GARFIELD. Yes, sir. He was one class ahead of me there.

Mr. VERTREES. You knew him then?

Mr. GARFIELD. I did.

Mr. VERTREES. You formed a friendship then?

Mr. GARFIELD. I knew him fairly well at that time; yes, sir.

Mr. VERTREES. What were the relations between you and Mr. Ballinger, personal relations, down to, say, February, 1909?

Mr. GARFIELD. They have always been very friendly.

Mr. VERTREES. I observe from the letters that you have introduced that you address each other as Dick and Jim.

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. That would indicate that your relations were quite friendly.

Mr. GARFIELD. They were friendly. We were intimately acquainted with one another.

Mr. VERTREES. And you were members of the same political party?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. Is it not a fact, when he was commissioner and you were Secretary, that you quite frequently saw each other?

Mr. GARFIELD. Yes, sir; nearly every day.

The CHAIRMAN. May I ask a question there? Did you recommend his appointment as commissioner when you were Secretary?

Mr. GARFIELD. I did—before I was Secretary, in fact.

The CHAIRMAN. Yes, before you were Secretary you recommended his appointment as commissioner?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. He visited your office when he was commissioner and you were Secretary almost daily, did he not?

Mr. GARFIELD. Very often.

Mr. VERTREES. And talked over matters and things such as friends and men in your relations to each other would discuss?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. Now, you have spoken in reference to a statement of Mr. Ballinger's in his report to the President in which he said he had a conversation with you in reference to the recalling of the clear listing of these Cunningham claims, and I understood you to say that you did not recall that conversation.

Mr. GARFIELD. That is correct.

Mr. VERTREES. But I did not clearly understand you with reference to conversations with Governor Moore.

Mr. GARFIELD. Yes—

Mr. VERTREES. Now, wait a moment. I will ask you if you are acquainted with Governor Moore?

Mr. GARFIELD. I have no recollection of Governor Moore, but I have no doubt that I did meet him, as I did many of the other men who were interested in Alaska coal legislation and coal legislation in general.

Mr. VERTREES. As far as that is concerned, the people interested were very much concerned on the subject were they not?

Mr. GARFIELD. Without doubt.

Mr. VERTREES. Is it not true that the officers of Government felt like the situation was one that demanded some sort of legislation?

Mr. GARFIELD. Yes, sir; we made various reports tending in that direction.

Mr. VERTREES. You felt the situation was awkward and bad and something should be done so far as the coal claimants were concerned generally, and for that matter, as far as the Government was concerned.

Mr. GARFIELD. That applied to all of the coal fields.

Mr. VERTREES. But that was certainly so as to the Alaskan field?

Mr. GARFIELD. Not particularly so. The others were in as quite as difficult a position.

Mr. VERTREES. But it was so as to them?

Mr. GARFIELD. It was.

Mr. VERTREES. And that situation of affairs was appreciated and recognized, was it not, by you, as Secretary, Mr. Ballinger as Commissioner, the members of Congress, and others?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. There was not exactly a concurrence of effort, but there was simultaneous effort to do something in some way by legislation to relieve the situation, was there not?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. Various bills were introduced?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. So, as I understand you, it may be that Governor Moore had a conversation with you upon that very subject. You do not say he did not?

Mr. GARFIELD. I have no remembrance of any conversation with Mr. Moore.

Mr. VERTREES. I know. But you do not say that he did not?

Mr. GARFIELD. Certainly not. I made that clear I think.

Mr. VERTREES. I just want to get it quite clear. Is it not true that Mr. Ballinger, in his statement to the President, says that the reason he called to see you, or rather mentioned the matter to you, was that he understood that Governor Moore had spoken to you previously on the subject?

Mr. GARFIELD. The statement of Mr. Ballinger is to that effect. I believe.

Mr. VERTREES. And is that not the reason he gives for speaking to you at that time on the subject?

Mr. GARFIELD. Yes, sir; he gives that as his reason.

Mr. VERTREES. Now, I want to ask you in reference to that Cale bill. As I understand it, your understanding of the Cale bill was and is that so far as the existing entries were concerned it related to such of them only as had been made in good faith.

Mr. GARFIELD. On the contrary, it related to those that had not been made in good faith.

Mr. VERTREES. I wish you would call my attention to that section.

Mr. GARFIELD. Section—

Mr. VERTREES. Section 8, is it not?

Mr. GARFIELD. I have the Cale bill here; just a moment, please.

Mr. VERTREES. Look at page 1414 of the record. Section 8 begins on page 1414 of the record.

Mr. GARFIELD. Reading from the original bill, section 8:

That none of the provisions of this act, except those contained in section 7 hereof, shall apply to or govern the making of entry of coal lands in the district of Alaska embraced in any location made in good faith prior to November 12, 1906, or in accordance with a circular of instruction issued by the Secretary of the Interior, May 16, 1907.

In other words, the good-faith locations that existed prior to those dates were not covered by the terms of the Cale bill.

Mr. VERTREES. Precisely; that is what I meant to suggest.

Mr. GARFIELD. And therefore all other locations not in good faith were covered by the provisions of this bill.

Mr. VERTREES. That is to say, the bill did not affect good-faith locations at all?

Mr. GARFIELD. It did not.

Mr. VERTREES. But bad-faith locations and locations yet to be made were all brought under the terms of the bill, were they not?

Mr. GARFIELD. They were.

Mr. VERTREES. And had to comply with its terms and its provisions?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. Those that were called "bad faith;" that is to say, they had to come in under the new act.

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. And therefore did it have any reference to bad-faith locations at all?

Mr. GARFIELD. It gave bad-faith locations the same advantage as an original location would have.

Mr. VERTREES. Is this not a correct statement of it, Mr. Garfield? That inasmuch as it excluded good-faith locations it thereby meant that all other locations of every kind—that is, those that were assumed to be bad, those that were bad, which were none at all, as well as those that were yet to be made, which were none at all—all had to be controlled by the terms of this act.

Mr. GARFIELD. That is the correct statement; yes, sir.

Mr. VERTREES. That is to say that it did not assume to validate any bad-faith entries made under the old law.

Mr. GARFIELD. No, sir.

Mr. VERTREES. You so understood it that way then and so understand it now?

Mr. GARFIELD. I do not know what my understanding of the Cale bill was at that time.

Mr. VERTREES. Then, from the earliest you have understood the bill that has been your understanding of it?

Mr. GARFIELD. Generally; yes, sir.

Mr. VERTREES. And particularly, too, has it not?

Mr. GARFIELD. Yes, sir; with regard to that particular clause.

Mr. VERTREES. "Yes, sir," answers my question all right.

Mr. MADISON. If the Cale bill had become a law, how would it have resulted to the advantage of those who had made bad-faith entries?

Mr. GARFIELD. Although, as explained by Mr. Ballinger, and as I read from his hearing, it would have given, in his mind, the opportunity for these locators to take advantage of that bill, as he expressed it, by transmuting their entries. When I first heard that hearing last fall I was myself in doubt as to just what he meant. I still do not know exactly what he intended by that paragraph. But it is evident that he had in his mind the idea that existing locators could transfer, or transmute, as he expressed it, their location so as to take advantage of the Cale bill to consolidate those entries up to the limit of the bill itself.

Mr. VERTREES. But I understand you, Mr. Garfield, no such thing as that, whatever may have been his notion, would be possible, for that bill related to entries and had no regard to validating bad-faith entries at all; it treated all newcomers, whatever might have been their previous situation—

Mr. GARFIELD. Treated all newcomers the same; yes, sir.

Mr. VERTREES. And did not assume to deal at all with good-faith entries previously made?

Mr. GARFIELD. No; they were excluded by the last section of the bill.

Mr. VERTREES. And all other kinds had to come under the terms of the act, whatever they might be?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. Now we understand it.

Mr. MADISON. His idea was that they could go under the terms of the act and go on to patent; that is, those that were bad-faith entries. Is that right?

Mr. GARFIELD. That was evidently the construction placed on it by Mr. Ballinger before the committee. This discussion shows just exactly the situation they were in at the time. I could not interpret just exactly what the bill meant, and I could not tell whether the bad-faith entries, to use your expression, could or could not be validated. It was therefore, because of that divergence of view that we had with regard to these various bills, that I made the report upon which finally was based the legislation of May 28, 1908.

The CHAIRMAN. It seems to me, Mr. Garfield—

Mr. VERTREES. Now, I will call your attention to page 1248 of the record, which is the argument of Mr. Ballinger.

The CHAIRMAN. Will you allow me to ask a question there?

Mr. BRANDEIS. Certainly, Mr. Chairman.

The CHAIRMAN. It seems to me, Mr. Garfield, looking at this bill as it is printed in the book, that it only applies to certain cases, and there was nothing in the Cale bill, testing it by its phraseology, that tended to legalize any fraudulent claims or any claims not made in good faith—I mean, basing it upon the language of the bill, which only applied to a few entries.

Mr. GARFIELD. The first part of the bill—it does seem that that might be the construction placed upon it, Senator, as I have said.

The CHAIRMAN. Section 8 makes it still clearer that none of the provisions of this act except those contained in section 7 shall apply to or govern the making of entry of coal land in Alaska embraced in any location made in good faith.

Mr. GARFIELD. That left still open that question as to the interpretation of what the language meant in section 8.

The CHAIRMAN. Practically, Mr. Garfield, did not this bill practically leave these Guggenheim and other locations to stand just in the condition they were before?

Mr. GARFIELD. I am not so sure about that.

The CHAIRMAN. Are you sure that it did not?

Mr. GARFIELD. Why, I think it would have left open, possibly, the interpretation under the last section, so they might have become validated under that section.

The CHAIRMAN. But of that you are not certain?

Mr. GARFIELD. I felt at the time it was so uncertain that I suggested additional form of legislation which appears in the final form of the bill, and in order to clear away every doubt I suggested a form of bill which was finally adopted, using the words "good-faith locations made in their own interests."

The CHAIRMAN. This was not the bill that finally became the law?

Mr. GARFIELD. Oh, no; but that section of the bill, section 8, you will find the wording very like the bill that finally became the law, and that section was evidently used by those who drafted the subsequent Alaska bills, Senator Heyburn and Mr. Mondell, and in my own department that section was used as a basis for that legislation, and comparing the language you will see that they are quite identical.

The CHAIRMAN. That is all. Go ahead, Mr. Vertrees.

Mr. VERTREES. Now, return to page 1248 of the evidence, if you please, Mr. Garfield.

The CHAIRMAN. Twelve hundred and forty-eight of the evidence?

Mr. VERTREES. Yes, sir; about three-fourths of the way down, in the argument of Mr. Ballinger, made before the committee. I call your attention to that part in which certain italics appear: "In my estimation it has not been the intention of the people in the field nor in Alaska to put them in hostility to the land, but they have been in a position where they could not, by virtue of the circumstances, accommodate themselves to the laws, and with this last provision they could transmute their present entries into the form suggested by this bill, and those new entries would be treated as primary entries."

Now, does not that mean those entries shall come in and be regarded under the law, as he says it, as primary entries under the new law?

Mr. GARFIELD. I said I was uncertain as I read it through, and I am still uncertain as to just what was intended by it. If it had reference wholly to section 8 of the bill, to which he was paying particular attention, it might have been in his mind that under section 8 these particular entries could have been validated as bona fide entries, but it is doubtful.

Senator ROOT. Is there any other language? I don't see any other language in the bill which would seem to apply to anything done prior to the passage of the act.

Mr. GARFIELD. Section 8 is the only one that applies to any action prior to the act.

Senator FLETCHER. Does not the question depend on what Cunningham entries were made in good faith and what were not? And isn't the whole question one of good faith, whether the act applies to entries or not?

Mr. GARFIELD. I should hardly say so; and yet it is difficult to construe that bill. It is drawn in a rather unusual way.

Senator FLETCHER. It says it does not apply to entries previously made in good faith; but these that were not made in good faith, would it not apply to them?

Mr. GARFIELD. Those that were not made in good faith could not get in under section 8 of the bill, but could under the balance of the bill.

The CHAIRMAN. Does it not come within the rule of *expressio unius est exclusio alterius*—that is, the expression of one rule, one plan, excludes the opposite. When it is said that none but the bona fide claimants, did not that exclude all the other claimants?

Mr. GARFIELD. It excludes the other claimants from the operation of the bill so far as section 8 was concerned.

The CHAIRMAN. Was there anything in the other sections of the bill which related to these fraudulent claimants that would bear upon it?

Mr. GARFIELD. If the bill meant anything as to those it would mean that they would have to abandon their old locations and relocate under the new bill.

Senator ROOT. Entirely prospective?

Mr. GARFIELD. Entirely prospective; entirely so. And therefore, considering what Mr. Ballinger meant in that portion of his evidence that they were considering this morning, as to prices it left me, as I

read it last fall, still in the dark as to exactly how it would apply. If you recall, he says there:

As to the disposition of the coal areas under future legislation, I would leave that elastic so that the higher grades of coal could be sold at a higher rate than \$10 an acre; but upon the coal already entered or located I would leave the price as it heretofore was, a flat price of \$10 an acre.

Mr. McCALL. That would mean entries made in good faith, the \$10 an acre would apply?

Mr. GARFIELD. There is no such limitation in that statement.

Mr. McCALL. It was his idea, was it not, that they might transmute bad-faith entries, make new entries, and by doing that they would come under this higher price of coal?

Mr. GARFIELD. On the contrary, he does not so limit the language that he uses in that particular, but refers to all entries, "but upon the coal already entered or located. I would leave the price, as it heretofore was, a flat price of \$10 an acre." Now at that time the only coal entered was, I now find from an investigation of the records, the Cunningham claims. There were no others that had been entered.

The CHAIRMAN. Let me ask this question, and I ask it for information: Would not, under section 8, all those entries, except those that were made in good faith, be open to relocation under that bill?

Mr. GARFIELD. I think they would, but whether there would be any preference in location I do not know.

The CHAIRMAN. That would be an open question?

Mr. GARFIELD. That would be an open question.

The CHAIRMAN. So that nothing in that bill was saved, practically, except locations made in good faith?

Mr. GARFIELD. That was all.

The CHAIRMAN. But as to all the others, the bad-faith locations or fraudulent locations, they could be relocated again?

Mr. GARFIELD. That was the only way, I should judge, they could be patented.

The CHAIRMAN. In other words, they were to be treated as though they were canceled, as if the lands were open to exploration, discovery, and entry?

Mr. GARFIELD. That interpretation might be placed upon it.

Senator ROOT. Their validity would be derived from the new locations?

Mr. GARFIELD. Yes, sir.

Senator ROOT. And not from the old and invalid location?

Mr. GARFIELD. That, I think, would be true.

Senator ROOT. I do not see anything in this bill which is retrospective except the saving clause.

Mr. GARFIELD. No, sir; except the saving clause.

Mr. MADISON. Under the general laws for the acquisition of lands in the public domain, if a person makes an entry and is afterwards compelled to release that entry on account of fraud, is he not considered, under the general law, and treated as a person who has exercised this right, and not permitted to make another entry?

Mr. GARFIELD. I do not recall the land decisions on that, Judge Madison. My impression is that there had been different rulings as to whether or not the right of an entryman is exhausted if he fails to obtain patent because of fraudulent act.

The CHAIRMAN. My impression is—I do not know that I am absolutely correct about that, perhaps you can correct it—that in that case, in a case of fraudulent entry, the entryman loses the money that he paid; it is forfeited to the United States.

Mr. GARFIELD. He loses the money without doubt, but whether he thereby exhausts his right to another entry I do not recall.

Mr. BRANDEIS. He does under the old regulations, which provide that there could be but one filing.

Mr. GARFIELD. That is a somewhat different question, Mr. Brandeis.

The CHAIRMAN. Yes; that is a different question. Now, I think the old homestead law in express terms excludes a subsequent location.

Mr. GARFIELD. That is a different situation.

Mr. VERTREES. But that is not the case here?

Mr. GARFIELD. But that is not the case with regard to the mineral entries.

Mr. McCALL. I do not understand the question of prices. Will you turn to the bottom of page 1247, where Mr. Ballinger says that:

For instance, in line 4, instead of fixing the price at \$10 I would say "not less than \$10," but upon the coals already entered or located I would leave the price as it heretofore was, a flat price of \$10 an acre.

Now, my inference from that was that where bad faith entries were given up and made as new entries they would come under Mr. Ballinger's proposition that more than \$10 should be paid.

Mr. GARFIELD. I am uncertain——

Mr. McCALL. And that the \$10 rate should only apply to entries that had previously been made on good faith?

Mr. GARFIELD. I am uncertain about that.

Mr. McCALL. I may be entirely wrong about it.

Mr. GARFIELD. I am uncertain about it from the language of the bill. Certainly under the bill as drafted there was no such distinction. Just what effect the proposed amendment would have made I am in doubt about.

Mr. VERTREES. Does not Mr. Ballinger suggest, on page 1250 of the record, that amendment to the bill should be made?

Mr. GARFIELD. That was made as the result of a question earlier asked by Mr. Smith, of California.

Mr. VERTREES. I am not asking you how it came to be made, but as to the fact that he did make it, and say it ought to be done.

Mr. GARFIELD. At the end of the hearing he does make that statement.

Mr. VERTREES. Then he does make it, whether at the end or in the middle or in the beginning.

Mr. GARFIELD. I think it is quite material where it is made.

Mr. GRAHAM. Is there anything in the subject-matter there that made it difficult to express clearly and simply what was intended?

Mr. GARFIELD. I think not. I think it should have been very clear.

Mr. GRAHAM. Would it have been easy to do it?

Mr. GARFIELD. I think so.

Mr. MADISON. I want to ask this question, for the purpose of clearing up a matter in my mind: Suppose that after the Cunningham entries were clear listed, the money paid, and they were waiting

for patents, that Cunningham and his associates had concluded that they had been caught in their fraudulent attempts—assuming for the purposes of the question merely that they were guilty of fraud—that having been caught they resolved, inasmuch as the land was very valuable, to abandon these claims, to release to the Government all their interest in it, which they could have done, of course, and then have relocated them under the old law, assuming that no new law had been passed; could they have done it, or would it not have estopped them from relocating their claims under the old law and starting anew?

Mr. GARFIELD. That would not have estopped them from relocating, but on the evidence before the department certainly the department would have been very careful in considering and would have considered the previous history of such location. There is nothing to prevent any man from making a location; the Government can not prevent him. The only thing the Government can do is to consider when the locations are presented for action by the department, consider the facts surrounding the location, and the mere withdrawal from one location and relocating on the same point may or may not affect the action of the department.

Mr. BRANDEIS. Was it not impossible to relocate because all the land had been withdrawn from entry entirely, and therefore it would not have been possible for anybody to relocate?

Mr. GARFIELD. If there had been an absolute abandonment of the location itself, it then would not have been subject to immediate reentry.

Mr. VERTREES. Consequently the only way to get patents would have been by keeping alive the location which had been made before the withdrawal of November 12, 1906, because since that time there has been no opportunity to locate anything.

Mr. GARFIELD. In order to have saved whatever rights those claimants may have had, or any claimants may have had, it would have been necessary to keep the old location.

Mr. VERTREES. Is not this a true statement of the situation at this time, that the Alaska coal lands had been, by an order, withdrawn from entry on an order made in the latter part of 1906, and that the object of the Cale bill and the other bills was to reopen the lands to entry?

Mr. GARFIELD. No; on the contrary, that was not the object of the Alaska legislation.

Mr. VERTREES. What was it?

Mr. GARFIELD. The object of the Alaskan legislation was to give to the bona fide entryman the right to consolidate in larger areas than were permitted under the old law.

Mr. VERTREES. Did it not go further and say that anyone—as many as saw fit—could come and enter the land there?

Mr. GARFIELD. I am speaking of the bill as it finally passed—the general legislation—and the Cale bill would have for its purpose—

Mr. VERTREES. Was that not—

Mr. GARFIELD. If you will permit me, I would like to complete my answer to the question.

Mr. VERTREES. The legislation that I asked you about especially was that Cale bill and the other legislation.

Mr. GARFIELD. If you will permit me, I would like to complete my answer; that up to that time it was not the purpose of reopening this land, but was providing for an entirely new system of dealing with the land.

Mr. VERTREES. Are you not dealing with a phrase now when you say, "a new system of dealing;" do you not mean to allow people to enter those lands in the new form?

Mr. GARFIELD. Without doubt.

Mr. VERTREES. That was my question, if it did not provide for that. So, if you call it a new system, or anything else, it simply means providing a legal way by which you could enter land in Alaska which was not allowable under that withdrawal order that has been made in 1906.

Mr. GARFIELD. Yes, sir.

Mr. MADISON. Let me ask you a question now. Would the effect of the passage of the Cale bill, or did the act of May, 1908, have the effect of withdrawing or rendering ineffective the former order of withdrawal from entry?

Mr. GARFIELD. No, sir; it did not.

Mr. MADISON. So that the status of the land, so far as being opened to public settlement was concerned, was not at all affected by the legislation passed, and it would not have been affected by the legislation proposed in the Cale bill?

Mr. GARFIELD. No, sir; and furthermore—

Mr. MADISON. I wanted to get it clear in my mind as to what the effect was.

Mr. VERTREES. It was not affected by the act that was passed, but would not that Cale bill and the other bills have opened the lands to entry?

Mr. GARFIELD. Not necessarily, for this reason: If the Cale bill had been amended and a minimum price placed instead of a flat price of \$10 an acre, then the land would not have been open to entry until after classification and revaluation.

Mr. VERTREES. But is it not true that that act would have contemplated that the Secretary in good faith should go along and classify them to the end that they might be entered?

Mr. GARFIELD. Not under the original form of the bill. The original form of the bill fixed a flat price of \$10 an acre, and therefore there would have been no need of valuation, and could not have been.

Mr. VERTREES. If that is true, it reopened it without any revaluation or entry classification?

Mr. GARFIELD. Not necessarily; because the first provision of the bill itself provides for some formation, I think—

Mr. VERTREES. Does not section 3 say "all unpatented land of the United States in the District of Alaska?" I refer to page 1414.

Mr. GARFIELD. No. Section 2, line 13, of the bill contains the words "classified as coal under this act."

Mr. VERTREES. That means coal lands, does it not?

Mr. GARFIELD. Not necessarily; it required that the Secretary should take some affirmative action in segregating the land, and they reported upon that coal land as other lands.

Mr. VERTREES. But it contemplated that he should do it, did it not?

Mr. GARFIELD. Of course.

Mr. VERTREES. That is the same thing. And does not section 3 provide that—

All unpatented lands of the United States in the District of Alaska shall be subject to exploration by persons qualified to purchase under this act for the discovery of coal, but no title shall pass under any patent hereafter issued under any of the public-land laws other than the coal-land law.

In other words, does it not express it that the land shall be open to entry, that is the coal deposits shall—

Mr. GARFIELD. Shall be subject to exploration.

Mr. VERTREES. Does it not mean entry, too?

Mr. GARFIELD. No, sir; not necessarily. Exploration and entry are quite different things.

Mr. VERTREES. But is that not the initial step, and does it not further provide that it shall?

Mr. GARFIELD. After they have been classified; yes, sir.

Mr. VERTREES. It does provide that that may be followed up, to the end that they may be entered?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. That answers my question. Now, Mr. Garfield, I find in your letter of November 6, 1909, to the President, which appears on page 1232 of the record, that you deal with the question of the law in the beginning, and then later you deal with some questions of fact. That is correct, is it not?

Mr. GARFIELD. I distinctly said that I did not desire to discuss differences of interpretations of law.

Mr. VERTREES. I said you dealt with them; I did not say you entered into a discussion of them. I will read what you say and ask you if you did not say that. I read from page 1232—quoting from your letter:

I do not desire to discuss differences of interpretation of laws. Claims that I acted illegally will be found to rest upon a fundamental difference in policy between Secretary Ballinger's administration and mine. I took such action as I believed proper and necessary to safeguard the public welfare, unless there was some specific prohibition in law to prevent action, thus exercising the supervisory power and executive discretion vested in a Cabinet officer. Secretary Ballinger seems to take the position that he will not act, even though action be in the interest of the people, unless there is specific permissive or mandatory law. Such difference in policy arises from totally different conceptions of executive duty and leads to widely divergent administrative action.

Without discussing it, you there state, do you not, what you understand to be the difference between you and him as to the interpretation of the laws under which the department shall act?

Mr. GARFIELD. As to the policy under which the department acts.

Mr. VERTREES. Well, policy, then, if you please. Now, on page 1499 you have set forth an extract from your report as Secretary of the Interior, made in 1908. Please look at page 1499, and I will ask if you mean there to set forth your conception of your interpretation of the law, if you please—to phrase it differently, your idea of the policy to be pursued by the Secretary of the Interior?

Mr. GARFIELD. Both; interpretation of the law and policy.

Mr. VERTREES. Both?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. Now, I wish to call your attention to some of that, that we get clearly your view of what you conceived to be your duty under the law as Secretary of the Interior; and as I understand you, this expresses it?

Mr. GARFIELD. In part; yes, sir.

Mr. VERTREES. Well, before we read it, is there anything further that qualifies it in anyway?

Mr. GARFIELD. I do not know whether there is or not. That does not cover the whole of the executive duty. In so far as it relates to the particular matters therein referred to, yes, sir.

Mr. VERTREES. That answers my question. Now, among other things you say:

The public domain has been placed by Congress under the Interior Department, and ample authority is vested in the Chief Executive and the Secretary of the department to take such action as is necessary to care for the public domain. During many years the Executive has, in the exercise of this general authority, withdrawn at different times and for various purposes areas of the public domain and for the time being prevented those areas from being entered for private use.

Full power under the Constitution was vested in the executive branch of the Government, and the extent to which that power may be exercised is governed wholly by the discretion of the Executive, unless any specific act has been prohibited either by the Constitution or by legislation.

In the exercise of this power it is the duty of the Executive to take such action as will protect the interests of all the people of the United States in their property rights, and, if the occasion requires and the facts warrant, it is the duty of the Executive to prevent the acquisition of the public domain by private interests if such acquisition be detrimental to the public welfare.

Later, omitting some of it, which is probably not necessary—

If there be no power to affirmatively provide for the ultimate use or disposition of the public domain in accordance with the needs of the public welfare, it is the duty of the Executive to temporarily prevent its acquisition until Congress may have an opportunity to consider the question and adopt appropriate legislation.

This stewardship duty of the Executive is most concretely manifest in the care of the specific property known as the public lands and their resources. From the earliest days the Executive has found it necessary in the public interest to take action concerning the public lands by withdrawing areas from entry. There was no specific provision of law for many of those withdrawals, and yet they were made unhesitatingly by the Executive as steward and were approved by Congress in acts granting land for the purpose for which it was withdrawn. These were purely the acts of stewards farsighted enough to foresee and protect the interests of their principal, the people of the United States.

President Roosevelt's withdrawal in 1906 of more than 60,000,000 acres of land supposed to contain coal, in order that it might be classified and saved for its best use, and the recent withdrawal of phosphate lands for the benefit of our farms, are notable examples of the exercise of this power in protecting the public use of our resources.

The courts have upheld the power of the Executive to withdraw public lands, not only for public use but also for the public welfare when in the judgment of the Executive the public good demands such action.

And you there cite a number of cases. Now, as I understand your position, Mr. Garfield, from that, it is this: That unless there is some law prohibiting it, the Executive—and by that you mean the Secretary of the Interior standing in the place of the Executive—with reference to land, unless the President shall otherwise determine, has the right to withdraw public land, not only for public use but for the public welfare when in his judgment the public good demands such action?

Mr. GARFIELD. Yes, sir: because there is granted to the Secretary of the Interior the care and custody of the public domain.

Mr. VERTREES. Now, upon the other hand, is there not a line of thinkers who hold that no such powers exist in the absence of legislation authorizing it?

Mr. GARFIELD. There are those who occupy that position, and I take it that the difference is expressed perhaps in this fashion. I

never advocated the proposition that an Executive could act without the law. There must be the Constitution or the law first governing his action. If there was a general authority given, then within that general authority, unless he found some specific prohibition, he then should act as he thought best for the public welfare. It is like the engineer on a track. A man can keep on the track and do nothing, or he can move ahead and carry the load of the train behind him. In either case he is on the track. So a man may be within the law and do nothing, or he may be within the law and do much for the public good.

Mr. VERTREES. But what I want to get at is, I want to know whether or not you did not hold and maintain there that in all those matters not forbidden, which the chief of the department deems necessary for the public good as he sees it—whether it is for the public use or for public welfare—he can act with reference to the public lands, withdrawing them according to his discretion?

Mr. GARFIELD. If he has, in the first instance, the original power over the property, as he has over the public domain.

Mr. VERTREES. I will ask you if, in point of fact, this is not true that Congress has the exclusive power over the public domain and public lands, and that not one of these cases that you cited there sustains the position which you have maintained?

Mr. GARFIELD. If I thought that, I certainly should not have made that report to Congress. I believe you are wrong in your interpretation.

Mr. VERTREES. I am going to ask you to look at these cases again and in the morning—to-morrow—bring any single one of them that you have cited there which authorizes the Executive or the Secretary to withdraw land, saving or excepting when Congress has authorized it in the first instance.

Mr. GARFIELD. I think I can answer that question by saying that I have argued that question recently before the Public Lands Committee of the Senate, and they have reached the conclusion that I stated there—that the power is inherent in the Executive, and that no legislation was needed to change that law.

Mr. VERTREES. One of the cases that you cite there, Mr. Garfield, to sustain your view of the matter, is the case of the United States v. Blendeau (122 Fed. Rep., 703). Now, I will ask you to examine that case here and now and see if this is not the doctrine that that case lays down, and in these words:

The truth is, however, that the President or a head of a department of the Government can not reserve any public land from sale except when authorized by some treaty, or law, or authorization by Congress.

Whether or not there is anything in that case against that general doctrine which you cite to sustain your view of the matter?

Mr. GARFIELD. Now, if it is desired, Mr. Chairman, that I shall make a carefully prepared legal argument and take up each of these cases and explain them, of course I will do so, but I can not pretend to take up in a fragmentary way the discussion of one or more of these cases in this manner.

Mr. VERTREES. Now, Mr. Garfield, I have not asked you to do that—to make a general brief or general discussion. You have cited to the committee, and also to the President in your report, certain cases which you say sustain the view you have advanced here to this committee.

Mr. GARFIELD. Well, Mr. Vertrees, if you disagree with my contention, of course it is for you to argue that proposition to the committee.

Mr. VERTREES. Surely.

Mr. GARFIELD. I have already argued the proposition to one committee and they have sustained my view. This committee may take a different view.

Mr. VERTREES. That is true.

Mr. GARFIELD. Your eloquence may overcome mine.

Mr. VERTREES. But while that may or may not be true, Mr. Garfield, I wish you now just to look at these cases here that you cited to overcome the other objection and see if it is not directly the reverse of what you stated before.

Mr. GARFIELD. On the contrary, by the very reading that you have now given, if I recall it, the statement is that Congress has that authority, and Congress having given the authority to the Secretary of the Interior as custodian of the public domain he withdraws land.

Mr. VERTREES. In other words, your position is that when Congress has said that the land shall be opened for entry that when it comes along though and says you shall look after and care for the land that means that you can annul that general law if, in your judgment, it is in the interest of the public to do it?

Mr. GARFIELD. On the contrary, the very opposite is what I have always maintained, that the withdrawal of public lands which we have made, were not withdrawals, but acted as a suspension of the public-land law, but they prevented certain land from being acquired under the laws which were not applicable to this specific land, and therefore it was the exercise of a part of the executive of a protective power to prevent the unlawful acquisition of the public land.

Mr. VERTREES. Now, let me see if I understood that correctly, and what you stated originally on that point. Is this a correct statement—coming now to power sites especially—that your idea was—to express it more accurately—your understanding of the law, and therefore your effort and duty was under these reclamation projects to withdraw such land as you saw proper and fit for them; is that right?

Mr. GARFIELD. So far as the reclamation act is concerned, I used it for that purpose; yes, sir.

Mr. VERTREES. Now, projecting that a little further. If I understood you correctly in your statement at the last session, you said that when there were power sites capable of producing power which could be transmitted to a distance for the purpose of establishing pumping stations for reclamation projects, that you considered them within the general principle of the reclamation project, and that you had the power to do that?

Mr. GARFIELD. Some of them were, yes, sir; not all of them.

Mr. VERTREES. If they were?

Mr. GARFIELD. Yes, sir, if they were. If they were, they might be withdrawn under the reclamation act.

Mr. VERTREES. Suppose they were power sites that were not of that character, but valuable only for power sites not in connection with the reclamation projects but for commercial purposes—

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. If I understood you, your idea was that you thought you had the power to save them?

Mr. GARFIELD. I certainly had.

Mr. VERTREES. Although the general laws of the Republic—the act of Congress—provided that laws which related to coal land or agricultural land or mineral, as the case may be, might be entered under certain laws?

Mr. GARFIELD. There was also the other act to which I referred, the right-of-way act of 1901, and therefore under the right-of-way act it was necessary to prevent the lands that might be subject to the operation of that act from being acquired under any other acts of Congress. Now, if I may continue, under the act of 1901, neither you nor I could obtain an entry. All we could do was to obtain a permit to use that land for the purposes designated in that act, which included power sites and transmission lines and other various matters. Therefore, it was my purpose to prevent our land that was adapted to that character of use from being acquired under any other form of law, and therefore to withdraw, or solely to protect the public interest and prevent lands thus capable of use from being acquired in any other way, and for that reason it was improper, if the Secretary was properly guarding the public welfare, to permit any one of such sites to be acquired by entry.

Mr. VERTREES. As you understand the laws of Congress, there are none providing specially and particularly for the entering of power sites as such.

Mr. GARFIELD. On the other hand, Congress has adopted a very different policy and indicated that power sites could only be obtained as the result of permits, not as the result of entries.

Mr. VERTREES. So, there was no law providing for the entry of power sites as such, and your idea was that under such other forms of law of mineral lands, of coal lands, agricultural lands, as the case may be, they might try to acquire power sites.

Mr. GARFIELD. It is not only my idea, but I know they were attempting to acquire power sites.

Mr. VERTREES. So, it was with that view that you took the position you did?

Mr. GARFIELD. That was one of the moving causes.

Mr. VERTREES. The act of 1901 provided the right of way, did it?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. And these rights of way were in the nature of easements which they could acquire and which were good as long as the project that they were acquired for was operated and conducted.

Mr. GARFIELD. I do not recall all the provisions of that act. I think that is the substantial idea of the act.

Mr. VERTREES. Now, then, this act that you call the act of 1901, as you understand it—and you may correct me if I am wrong about that—did not give an easement but a mere license—a revocable license?

Mr. GARFIELD. A permit or license revocable at the will of the Secretary.

Mr. VERTREES. That is to say, they could come along and have rights of way for various purposes, transmission lines, telephones, telegraph, water, and a multitude of things—reservoirs, and the like. But the rights that they got were nothing more than mere licenses which the Secretary of the Interior could revoke at pleasure.

Mr. GARFIELD. The Secretary of the Interior on the public domain and the Secretary of Agriculture in the national forest.

Mr. VERTREES. I am speaking of the Interior.

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. Now, it was your idea, was it not, to prevent the acquisition of lands that were valuable for power sites, even though they might be available for any of these other purposes—to prevent their acquisition under the other laws and drive everybody to the taking of them and acquiring of them under this revocable license act of 1901.

Mr. GARFIELD. Not to drive them to do that; simply to compel them to obey the law.

Mr. VERTREES. You can distinguish between drive and compel, if you want to. I am not particular about that.

Mr. MADISON. What benefit came to the Government as the result of one of these permits, Mr. Garfield?

Mr. GARFIELD. The Government retained the right to control thereafter the use of that land, and there were certain restrictions that might be placed upon the use of that land provided the Secretary of the Interior or the Secretary of Agriculture, as the case might be, imposed those restrictions. In the Department of Agriculture, under the forest permits, there were stringent regulations relative to the use of the power sites in connection with the permits granted under that act, and, as I have stated, it was my intention to impose the same or similar restrictions and conditions upon the future permits that might be granted of the separate domain outside of the national forest.

Mr. MADISON. What did the Government receive in the way of financial compensation?

Mr. GARFIELD. Up until that time nothing, excepting in a few instances within the national parks, whereas on the forest reserves they were then receiving some compensation under the permits there granted.

Mr. OLMSTED. Mr. Garfield, was any of the land withdrawn by the Government, except for such withdrawals subject to entry, for any purpose under any act of Congress?

Mr. GARFIELD. They were not really subject to entry unless they might have been considered more valuable for entry for one purpose than another, and the withdrawal was a preventive measure. The withdrawal made it possible to say beforehand to the entryman, "This class of land can not be entered, but must be used in accordance with the permit act."

Mr. VERTREES. Of course, if it could not have been entered, it could not have been acquired except under the action of the department; but you thought that by this withdrawal it would prevent announcing to would-be settlers, as well as the department, the large number of entries, which would have been ruled by the department to have been illegal?

Mr. GARFIELD. It would have so resulted; yes, sir.

Mr. VERTREES. Mr. Garfield, the laws classify land for the purpose of entry into mineral or coal land and agricultural and timber land, do they not?

Mr. GARFIELD. Those, I think, cover the general laws.

Mr. VERTREES. The general classification?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. It did not in such classifications as power sites, did it?

Mr. GARFIELD. It was not a classification in those other lines, but under each of these laws there were provisions for acquiring that class of land, but there was no general classification of the land.

Mr. VERTREES. Before you get to that, this point is true, it is not that a given piece of land, a given acre of land, or a given section of land might be valuable for all of those purposes?

Mr. GARFIELD. It might be.

Mr. VERTREES. And therefore the question of what kind of land it was had to be determined by somebody or some authority?

Mr. GARFIELD. And ordinarily in the proper practice it was determined by the applicant rather than by the Government. We attempted to change that and make the Government the party to determine.

Mr. VERTREES. And it was according to its usefulness or its value as agricultural or mineral or coal land?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. And those were the classifications that the statutes, or the acts of Congress recognized and made?

Mr. GARFIELD. That the acts of Congress recognized.

Mr. VERTREES. And made?

Mr. GARFIELD. No; not classifications; it permitted the entry of land of that character under those acts.

Mr. VERTREES. You may have it that way, if you prefer it.

Mr. GARFIELD. I think it is quite different in the technical discussion of the land laws.

Mr. MADISON. Suppose a certain tract of land in Wyoming was valuable as a power site but was also in a territory that was subject to entry under the homestead laws. Could this land have been entered—this tract—have been entered under the homestead laws if it had not been by that withdrawal?

Mr. GARFIELD. It might have been; in that instance it would have been for the Secretary of the Interior to determine whether or not that was a proper homestead entry, and that brought the question that has always provoked difficulty, namely, a land was more valuable for one purpose or another, and that was a matter of executive discretion.

Mr. MADISON. But more valuable for a power site than for a homestead entry, then the Government had the right to say that the land could not be entered as a homestead?

Mr. GARFIELD. It could.

Mr. MADISON. And that was granted by this law of 1901?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. That is just the point I wish to get at now, that I wish information on, with respect to classification. You objected to my word "classification," and I will repeat it again to get the thought that I wish you to answer. I must take it by steps. It permits the entries of lands which are regarded as valuable for agricultural purposes.

Mr. GARFIELD. What law, the homestead act?

Mr. VERTREES. Yes.

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. And these lands, valuable as mineral lands, were allowed to be entered——

Mr. GARFIELD. Under the mineral laws; yes, sir.

Mr. VERTREES. And lands valuable for timber were allowed to be entered?

Mr. GARFIELD. Under the timber and stone act.

Mr. VERTREES. And lands valuable for coal——

Mr. GARFIELD. Under the coal laws; yes, sir.

Mr. VERTREES. Now, there were no laws dealing with power sites as such—allowing lands to be entered as power sites?

Mr. GARFIELD. There was not.

Mr. VERTREES. That is the point I am on now. There was not.

Mr. GARFIELD. There was not.

Mr. VERTREES. But this situation you had thought had presented itself in many instances, that there were lands available for one or the other of those purposes which the law did contemplate—timber, mineral, coal, or homestead—but to your thinking was much more valuable as a power site than for any of those purposes?

Mr. GARFIELD. In some instances more valuable; in others it was not valuable at all for this purpose, but was attempted to be taken under some of those acts.

Mr. VERTREES. Let us get to those that you regarded as more valuable for power sites. Now, the case that I put to you then—and there were a number of them——

Mr. GARFIELD. I do not know how many there were.

Mr. VERTREES. Just give us a general idea. There were such cases?

Mr. GARFIELD. Without doubt.

Mr. VERTREES. And for that reason you made these immense withdrawals, did you not, to cover them?

Mr. GARFIELD. No, sir; not for that reason. That was one of the moving reasons.

Mr. VERTREES. Was not that the principal reason?

Mr. GARFIELD. By no means.

Mr. VERTREES. What was the principal reason?

Mr. GARFIELD. The principal reason, as I have stated several times, was the desire to prevent these lands that ought to be used for those purposes from being acquired under any other act of Congress.

Mr. VERTREES. Is that not another way of stating that it was to prevent their acquisition?

Mr. GARFIELD. I prefer my way of stating it to yours.

Mr. VERTREES. I do not care for the method, so that we may get the fact. It comes to this, then, that it was to prevent the acquisition of these properties that you regarded as valuable as power sites, or more valuable than for other purposes, under these other statutes?

Mr. GARFIELD. The improper acquisition under the other statutes.

Mr. VERTREES. What made it improper, if the other statutes allowed it, and there was no statute here with reference to power sites?

Mr. GARFIELD. There is a statute with reference to power sites.

Mr. VERTREES. I thought you stated a while ago that there was not.

Mr. GARFIELD. On the contrary, I said that there was no statute relative to the entry of power sites. You do not seem to get that clear in your mind, Mr. Vertrees, and it is a very clear distinc

for patents, that Cunningham and his associates had concluded that they had been caught in their fraudulent attempts—assuming for the purposes of the question merely that they were guilty of fraud—that having been caught they resolved, inasmuch as the land was very valuable, to abandon these claims, to release to the Government all their interest in it, which they could have done, of course, and then have relocated them under the old law, assuming that no new law had been passed; could they have done it, or would it not have estopped them from relocating their claims under the old law and starting anew?

Mr. GARFIELD. That would not have estopped them from relocating, but on the evidence before the department certainly the department would have been very careful in considering and would have considered the previous history of such location. There is nothing to prevent any man from making a location; the Government can not prevent him. The only thing the Government can do is to consider when the locations are presented for action by the department, consider the facts surrounding the location, and the mere withdrawal from one location and relocating on the same point may or may not affect the action of the department.

Mr. BRANDEIS. Was it not impossible to relocate because all the land had been withdrawn from entry entirely, and therefore it would not have been possible for anybody to relocate?

Mr. GARFIELD. If there had been an absolute abandonment of the location itself, it then would not have been subject to immediate reentry.

Mr. VERTREES. Consequently the only way to get patents would have been by keeping alive the location which had been made before the withdrawal of November 12, 1906, because since that time there has been no opportunity to locate anything.

Mr. GARFIELD. In order to have saved whatever rights those claimants may have had, or any claimants may have had, it would have been necessary to keep the old location.

Mr. VERTREES. Is not this a true statement of the situation at this time, that the Alaska coal lands had been, by an order, withdrawn from entry on an order made in the latter part of 1906, and that the object of the Cale bill and the other bills was to reopen the lands to entry?

Mr. GARFIELD. No; on the contrary, that was not the object of the Alaska legislation.

Mr. VERTREES. What was it?

Mr. GARFIELD. The object of the Alaskan legislation was to give to the bona fide entryman the right to consolidate in larger areas than were permitted under the old law.

Mr. VERTREES. Did it not go further and say that anyone—as many as saw fit—could come and enter the land there?

Mr. GARFIELD. I am speaking of the bill as it finally passed—the general legislation—and the Cale bill would have for its purpose—

Mr. VERTREES. Was that not—

Mr. GARFIELD. If you will permit me, I would like to complete my answer to the question.

Mr. VERTREES. The legislation that I asked you about especially was that Cale bill and the other legislation.

Mr. GARFIELD. I joined with Secretary of Agriculture in revoking the permits of rights of way and power sites wherever they were located in the national forests. The question had arisen as to whether the Secretary of Agriculture, to whom had been transferred all the rights to deal with the national forests, could revoke permits which had been granted by the Secretary of the Interior prior to the time of the transfer of the Forest Service to the Agriculture Department, without the approval of the Secretary of the Interior. In order to make it perfectly clear that his action was valid, I joined with him in revoking the acts mentioned in that letter—the permits, I should say.

Mr. VERTREES. The essential thing I wish to get at was more the time than the manner, Mr. Garfield?

Mr. GARFIELD. The time was the 2d of March, 1908.

Mr. VERTREES. And had not those permits been granted before you became Secretary of the Interior?

Mr. GARFIELD. Long before.

Mr. VERTREES. And been in existence for two years?

Mr. GARFIELD. Whatever the date is will be shown by the record.

Mr. VERTREES. Really more than two years?

Mr. GARFIELD. Possibly.

Mr. VERTREES. I mean so far as you are concerned, all the time that you were in office. What I wanted to know was why those 40 were revoked just then on the eve of your departure from office?

Mr. GARFIELD. The reason was this: I had directed in the spring of 1908 a report to be made to me of the rights of way on the public domain, and as a result of those reports I had revoked, I believe, a number, or there had been revoked a number of rights of way on the public domain outside of the national forests. At the same time there had been conducted in the Forest Service an examination of all the permits within the national forests, and it was the intention of Secretary Wilson and myself to clear away all of the old permits as rapidly as we could and establish the new order of dealing with power sites, and it was our purpose to revoke all that we could, and then establish the new order of things by imposing the restrictions that appeared under the permits granted by the Forest Service.

Mr. VERTREES. Why? What was the difficulty?

Mr. GARFIELD. The difficulty, in what way do you mean?

Mr. VERTREES. Why was that desirable? What were the reasons for it?

Mr. GARFIELD. Because under the old order of things the permittees were not required to pay anything to the National Treasury; they were not under the kind of regulation and restriction that we believed necessary in order to protect the public interest, and it was our desire to have a uniform method of dealing with all of the existing permits.

Mr. VERTREES. But that had been the case the whole time you were Secretary?

Mr. GARFIELD. And we had been considering the matter for the past year and were taking steps as rapidly as possible.

Mr. VERTREES. But before this, how many had you revoked?

Mr. GARFIELD. I do not recollect. The Secretary of Agriculture had had a number of them, I believe.

Mr. VERTREES. But the point I want to get at is, that it was not until the 2d of March that this wholesale action was had revoking the forty.

Mr. GARFIELD. Why, Mr. Vertrees, that matter was the result of many months' discussion. We had had before us at the joint hearing the representatives of a large number of power-site companies who were either seeking permits in the national forest or on the public domain or were seeking to revise their old permits, and we reached finally this determination, and it was my desire to, as far as possible, clear my desk and take all action that I thought was wise and necessary to dispose of the cases pending before me as Secretary of the Interior.

Mr. VERTREES. When did you first ascertain that you would not be Secretary of the Interior under the present administration?

Mr. GARFIELD. I think it was about the 1st of February, as I recall it.

Mr. VERTREES. The 1st of February, 1909?

Mr. GARFIELD. Yes, sir; 1909.

Mr. GRAHAM. Had you reached a conclusion in your mind as to whether it was necessary for you to join with the Secretary of Agriculture in those matters?

Mr. GARFIELD. I believed it was the part of wisdom to do so, so that there could be no question raised by the permittees that the action of the Secretary of Agriculture was not conclusive because the original permit had been issued by the Secretary of the Interior.

The CHAIRMAN. I ask your attention to the public lands outside of the forest reserves.

Mr. GARFIELD. I did not catch your question, Mr. Chairman.

The CHAIRMAN. Calling your attention to other public lands outside of forest reserves, did not the act of 1901, to which you refer, contemplate giving those licenses or permits without any charge? It did not provide for any compensation, did it?

Mr. GARFIELD. It did not in its terms provide for compensation, but the matter had been submitted by the Department of Agriculture to the Attorney-General, and he had held that under the terms of that act it was permitted to the department to oppose a charge, and it was my intention to follow the same rules and impose a charge on the public domain.

The CHAIRMAN. Was it the Attorney-General or the attorney for the Interior Department?

Mr. GARFIELD. No, sir; it was the Attorney-General. That matter was submitted from the Department of Agriculture, not the Department of the Interior. I may be in error regarding the procedure of the Department of Agriculture on that subject, but that is my best recollection of what occurred there.

The CHAIRMAN. The law of 1901 on its face does not contemplate any compensation.

Mr. GARFIELD. You are quite right.

Senator SUTHERLAND. Did you ever fix the scheme of charges?

Mr. GARFIELD. The scale of charges that I have in mind was practically the same as that adopted by the Forest Service. We had gone over that with the greatest care, Senator Sutherland, and submitted the matter to the engineers of a great many of the water companies. They had appeared before me, and we have discussed very fully the form of regulations and permits.

Senator SUTHERLAND. What was the charge based on, the value of the right of way and the power site alone, or also did it include the value of the water for the power privilege?

Mr. GARFIELD. As I recall it—I have not looked over one of those permits for some time—but my impression is that the rental basis was charged upon the amount of water flowing over the wheel, and that was considered the basis on which to start. I may be in error as to that.

Senator SUTHERLAND. The basis was on the water power rather than the value of the right of way?

Mr. GARFIELD. It was based on the value of use of the land at that particular point.

Senator SUTHERLAND. And, in turn, the value of the use of the land was fixed by the water-power privilege?

Mr. GARFIELD. It was fixed on the amount of water running over the wheel at that point.

Senator SUTHERLAND. Then the ultimate basis was the value of the water-power privilege?

Mr. GARFIELD. It was the value of that particular point for the use of water, without doubt. I understand the difference between the two points of view, and it was simply a question of endeavoring to arrive at a basis or what would be a proper basis on which the Government could determine the value of its land and measure of its use.

Senator SUTHERLAND. In other words, the measure which you fixed for a particular right of way would not have been as great if it was not used for that particular purpose?

Mr. GARFIELD. Without doubt it was the value of the water.

Senator SUTHERLAND. Therefore the value of the water right or water-power privilege was the controlling element in fixing the value?

Mr. GARFIELD. No, sir; I think that might be quite different, because the water-power privilege might be very much more valuable at other points than this. It was the question of the use of the water at that particular point.

Senator SUTHERLAND. The use at that particular point was the controlling element?

Mr. GARFIELD. Without doubt.

Senator SUTHERLAND. In that connection did you consider the question as to whether or not the Federal Government has power to make any such charge?

Mr. GARFIELD. Yes, sir; we have considered that very fully.

Senator SUTHERLAND. What conclusion did you arrive at?

Mr. GARFIELD. I reached the conclusion that we had that authority.

Senator SUTHERLAND. You had the authority, notwithstanding the facts that in arid land States the water belongs absolutely to the State.

Mr. GARFIELD. That was on the theory of the use of the property, not on the use of the water. The States have the water, and the Federal Government has the land. Neither is valuable without the other and each can impose such restrictions as it sees fit on the property within its jurisdiction.

Senator SUTHERLAND. Therefore, the State owning the water and the Federal Government owning the land, the Federal Government proposed to charge for both.

Mr. GARFIELD. On the contrary, the Federal Government proposed to charge only for the use of its lands. Its lands could not be

acquired by the owner of the water without first coming to the Federal Government. On the other hand——

Senator SUTHERLAND. And fixing the value of the land on the value of something you do not own.

Mr. GARFIELD. No; and the value of the use of that land for a particular purpose, and we have had that up before. It is simply a question of the cooperation between the national and state jurisdiction.

Mr. OLMSTED. You did not base the charge on the amount of damage to the land, because of its use for right of way, did you?

Mr. GARFIELD. In some instances where there was flowage back on the public property, then that would be true.

Mr. OLMSTED. But as to the mere right of way you did not restrict the charge to the amount of damage to the land for that purpose?

Mr. GARFIELD. No, sir.

Mr. BRANDEIS. You stated that you did base the charge, at least in part, upon the volume of water which passed over the wheel. Was it not based also on the head of fall—that is, the height from which the water fell, and which consequently is a very important element?

Mr. GARFIELD. As you call my attention to it, I think that is true. That was all part of the method of determining what the charge would be.

Mr. VERTREES. Was the principal element the damage or the injury to the Government's land or the value to the particular user?

Mr. GARFIELD. It was a question of value of use, not the question of damage.

Senator SUTHERLAND. And the value of its use for this one particular purpose?

Mr. GARFIELD. For that one particular purpose; yes, sir.

Mr. VERTREES. So it might follow, according to use and purpose, that the same water would be charged much more to one man than another, according to the use he was going to put it to?

Mr. GARFIELD. Yes, sir; I think it would so result. The greater the amount of use the greater would be the revenue.

Mr. VERTREES. I am not on the quantity or use, but the nature of the use.

Mr. GARFIELD. It would be a question of quantity.

Mr. VERTREES. Was it your idea to reserve all of these power sites or protect them for commercial purposes?

Mr. GARFIELD. Under the supervisory power?

Mr. VERTREES. I mean the supervisory power.

Mr. GARFIELD. Those would have been used ultimately by private parties for commercial development.

Mr. VERTREES. What I am getting at is your policy. If there was a power site that was not available, and you recognized that it was not available in connection with the reclamation project, in future years, but you thinking it might become available for commercial purposes, you meant to save that for the Government?

Mr. GARFIELD. Not for the Government; I meant to prevent private parties from acquiring that except under the permit system.

Mr. VERTREES. Is that not but another way of saying for the Government, not permitting the individual to get it, but the Government might get it?

Mr. GARFIELD. That the Government might hold the fee and permit the use.

Mr. VERTREES. For a profit?

Mr. GARFIELD. You mean profit to what?

Mr. VERTREES. The Government.

Mr. GARFIELD. I think there ought to be a charge for those things.

Mr. VERTREES. Your idea was to make it a matter of profit to the Government?

Mr. GARFIELD. Not a matter of profit, but a matter of regulations, one of the regulations being the imposition of a charge. Others would be the prevention of monopolies; others would be to prevent the imposition of unjust charges on consumers.

Mr. VERTREES. That could be regulated as a matter of public use by regulating the charges, could it not, so far as that is concerned?

Mr. GARFIELD. Not necessarily. It might be.

Mr. VERTREES. That is to say it does do it in the matter of those utilities connected with the public use, does it not?

Mr. GARFIELD. Not altogether so. It is quite divergent between the different States.

Mr. VERTREES. I am speaking of power. There is the power there.

Mr. GARFIELD. The state power; yes, sir.

Mr. GRAHAM. Your idea is that the charges and use should be regulated by limitations in the permit?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. But the chief aim would be to secure preference to the Government?

Mr. GARFIELD. The chief aim would be to prevent unjust charges to the consumers, to prevent monopoly, other than regulated and carefully restricted monopoly, because water power in itself is an essential monopoly, and unless controlled will become a most extortionate monopoly over the people.

Mr. VERTREES. So your idea was to hold these power sites which would be useful, as you charge, for commercial purposes in the future, until such time as their utility and usefulness might be developed?

Mr. GARFIELD. Not to hold them indefinitely, because they would be immediately open to use whenever they were needed.

Mr. VERTREES. In other words, your idea was not to use them now, but to conserve them until their use could be developed?

Mr. GARFIELD. On the contrary, quite the opposite. There has been no single time in the history of this conservation movement where the advocates of conservation have stood as the dog in the manger. Every time we have spoken on the subject we have insisted that we believed in present day use in accordance with the needs of the present day people, but we did object to that character of use at the present time that gave to you or to me, or to any other set of men the opportunity to have an unregulated or unrestricted use of that great power.

Mr. VERTREES. All persons are agreed as to that, are they not, Mr. Garfield?

Mr. GARFIELD. I am afraid not.

Mr. VERTREES. Do you know any man, public or private, that advocates it?

Mr. GARFIELD. Not publicly, but privately they defend that in many ways.

Mr. GRAHAM. Judging by what men do, how about it?

Mr. GARFIELD. By what men do, I am convinced that unless there is some action on the part of both the Federal Government and state authorities that we will have a water-power monopoly just exactly as we have had until regulated by the act of Congress a monopoly in transportation.

Mr. VERTREES. Your policy was then, of course, to protect, or, rather, to prevent that?

Mr. GARFIELD. Our policy had in view the preventing just that state of affairs.

Mr. VERTREES. And one part of your policy was to adopt the leasing system instead of a selling system?

Mr. GARFIELD. The leasing system, I think, was adopted under the act of 1901.

Mr. VERTREES. Then you adopted the leasing system as the safest basis?

Mr. GARFIELD. I did.

Mr. VERTREES. And you would apply to that mineral, coal, and water power—

Mr. GARFIELD. Yes, sir; not all minerals—not the precious minerals.

Mr. VERTREES. To what minerals would you apply it?

Mr. GARFIELD. I would apply it to coal, phosphates, and mineral fuels.

Mr. VERTREES. Why would you not apply it to the precious minerals as well as to coal? What is the difference in principle?

Mr. GARFIELD. The difference is this, that under our system of dealing with the precious metals we have adopted a system that is wholly different from that in vogue in other countries. We have very well-defined ideas as a people regarding the exploitation of the precious minerals, and the Government has not at any time attempted to go into the question of leasing these precious minerals; whereas, with respect to fuels and the coal, there has been a great deal of experience in our own country, both in public and private hands, in leasing the fuels, and it has been found to be an advantageous method of dealing with them in some way, and the same rule will hold true with water power. It has been found in some States that it is the wiser way to deal with water power, and I have no doubt that the time is ripe for a recommendation as to the change in our precious-mineral laws, and I believe the time will come when this law likewise will be modified, but I do not think it wise at the present time to recommend a change.

Mr. VERTREES. But you state that, as a logical conclusion, it must come to that?

Mr. GARFIELD. No; I do not say that. I say it may come to that.

Mr. VERTREES. Of course, all things are possible. I was asking you to draw the distinction between the handling of coal in the way you proposed to do it with this system of yours and the handling of precious metals.

Mr. GARFIELD. The area of coals may be defined by either the Geological Survey or others as exploration, whereas with the precious minerals, of course, it is the accidental find, ordinarily.

Mr. VERTREES. Have you studied the report of the government officials who have investigated these matters to see what the coal supply of the United States is?

Mr. GARFIELD. I have; yes, sir.

Mr. VERTREES. Now, what part of the supply in that which is known remains after this country has exhausted that, or has exhausted whatever there is up to date? In other words, how much of the known coal supply has been exhausted and used up to this time?

Mr. GARFIELD. I do not recall the figures.

Mr. VERTREES. Is it not four-tenths of 1 per cent?

Mr. GARFIELD. I can not recall the exact figures. The record speaks for itself.

Mr. VERTREES. More than 99½ per cent according to the government reports—is that not true?—remains untouched of known coal in the United States?

Mr. GARFIELD. I do not recall the per cents.

Mr. VERTREES. What amount of water power in the United States? You have made a study of that.

Mr. GARFIELD. There are reports on that subject. I do not carry the figures in my mind.

Mr. VERTREES. I will ask you to refresh your memory and say if they did not report that there was something like a minimum of about thirty-five or forty million horsepower, a maximum of something like sixty-five or seventy million horsepower, or a possible development of two hundred million horsepower?

Mr. GARFIELD. I do not recall the figures. I have not looked at those reports for over a year.

Mr. VERTREES. Without regard, then, to the amount of horsepower, the amount of coal in use, you are clear in the proposition that, great as those quantities may be, it is apparently essential that these should be conserved in the way you represent it?

Mr. GARFIELD. I have not the slightest doubt about it.

Mr. VERTREES. I will now ask your attention again, Mr. Garfield, to your letter to the President, which is found on page 1232. When we came to deal with the sites there, as I understand, you stated to the President that you believed he was misinformed about some matters that he had dealt with in his letter, and you proposed to give him correct information on that subject. Is that correct?

Mr. GARFIELD. I believed that he had been misinformed, and I proposed to give him the facts as I believed them.

Mr. VERTREES. I understand that of course as you believed them. Now, another thing in correcting the mistakes under which he labors, about the middle of page 1233 of the record you say this:

Immediately thereafter the lists for rewithdrawals were prepared by the Geological Survey in cooperation with the Reclamation Service and submitted, but without field examination. Exactly the same kind of information was used that was used for the original withdrawals, the chief difference being that all entered lands were eliminated by specific description rather than general exception. This difference in method of description accounts for the chief difference in total areas reported as withdrawn by Secretary Ballinger and by me. There is in fact no material difference when the proper deductions are made, and this was explained to Secretary Ballinger, but seemingly not considered in the report to you.

Now, I understand that to be a statement to this effect, Mr. Garfield, that as a matter of fact when you excluded the land that had already been entered by private persons, and therefore could not be

affected by withdrawals, that in reality there is no substantial difference between the quantities that had been withdrawn by you and the quantities that had been withdrawn by Secretary Ballinger.

Mr. GARFIELD. In the areas affected by the withdrawals. Now let me explain. I withdrew a whole section, for example, on a certain range, excepting therefrom either by direct statement or by the operation of law, the direct statement being not necessary, all existing entries. There might be but a single forty unentered in that section. Therefore, when I made that withdrawal that entire section or township, for example, my withdrawal was credited with the entire section or township, whereas, in fact, there was withdrawn but the single forty that was unentered. In Secretary Ballinger's withdrawals he designated the particular forty. Therefore, in that same area which I had withdrawn his withdrawal would appear as 40 acres and my withdrawal would appear as 640 acres.

Mr. VERTREES. In other words, you withdrew large areas ostensibly and apparently, but in those large areas there were areas that were owned by private persons that in reality were not withdrawn.

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. And when you eliminated them, leaving that quantity which you did withdraw, really and truly withdraw, there was no substantial difference between the areas, or amounts, rather, that you withdrew and that which Secretary Ballinger withdrew?

Mr. GARFIELD. Within the same areas; yes, sir.

Mr. VERTREES. And to that extent you wanted to correct the President. He had labored under the impression, and you say here that that matter had been brought to the attention of Mr. Ballinger and explained to him, but seemingly not considered in the report of the President. That is correct, is it?

Mr. GARFIELD. That is my language.

Mr. VERTREES. Now, I will ask you if it is not a fact that prior to that time, the writing of that letter, that you had been differently informed and that you had been told by Mr. Smith, not only told but written to by Mr. Smith, of the Geological Survey, that that was not the case, and that the material difference was just as Secretary Ballinger stated it to be?

Mr. GARFIELD. I had my information from Mr. Davis, of the Reclamation Service, who had sent me the various withdrawals, and I had tabulated those withdrawals and those restorations and had made personal examination of the papers I had before me of the facts as I understood them to be.

Mr. VERTREES. I will ask you if this did not happen, and happen in June preceding the time you wrote the letter to the President, that there appeared in the public press a statement from the United States Geological Survey, which, among other things, contained this statement:

Five of the eleven withdrawals already made include all the power sites available in the areas that were withdrawn by Secretary Garfield and restored to entry by Secretary Ballinger last month. The present withdrawals, however, comprise a much smaller acreage, one-sixth or less of the areas of the corresponding area withdrawal. This reduction has been made possible in part by omission of lands patented or reserved prior to the original withdrawals, but more largely by the exclusion of land in no wise essential or useful to the power of development. The vacated withdrawals included large areas of public land of possible agricultural or mineral value at such distances from the rivers as to have absolutely no connection with the future develop-

ment of the water resources. On the other hand the revised withdrawals in the same regions in some instances cover power sites missed by the earlier action. Thus, in the case of the Salmon River in Idaho, where the original withdrawal totaled 322,560 acres, that based upon the recent recommendation of the Geological Survey includes 55,700 acres. A similar reduction holds for the Owyhee River in Oregon, and in even greater measure for the Flathead and the Missouri and tributaries in Montana.

All the recommendations by the Geological Survey have been based upon official data already on file. The stream-flow records collected by the water resources branch of the Survey and by the Reclamation Service constitute practically all the hydrographic information available for the public-land States, stations on all the important streams in these States having been maintained for a series of years for the purpose of determining the water available for irrigation. The topographic surveys which have been conducted by the Geological Survey for thirty years also furnish means of selecting without delay the sections of the rivers important for power purposes.

Now, is it not true that on June 2, 1909, Director Smith, of the Geological Survey, sent you a copy of that with a letter?

Mr. GARFIELD. He did.

Mr. VERTREES. Does not that letter, among other things, say:

JANUARY 2, 1909.

MY DEAR MR. GARFIELD: I sent you on Saturday night a copy of the statement which was given to the press at that time and which you may have seen also in some of the papers. I think the facts in the matter are pretty well set forth there, but of course there are many details that were omitted. Six of the withdrawals recommended by the Reclamation Service and approved by you in January and February were restored by Secretary Ballinger early in April, and these aggregate a little over 1,400,000 acres, while the revised list includes about one-ninth of that acreage. The method by which this reduction in acreage was accomplished was by securing from the land office the status of the land of the earlier withdrawals and then selecting for the recommended withdrawal only such nonpatented land as might be, by any possibility, used in power development.

Mr. GARFIELD. Will you continue that, please? What is the rest of that?

Mr. VERTREES. Shall I read the whole letter?

Mr. GARFIELD. I have forgotten the letter in detail.

Mr. VERTREES. There is a good deal more of the letter.

Mr. GARFIELD. May I see it?

Mr. VERTREES. Certainly. Is there not a plain statement to you that the data, the material, the information available in his office was not used by the Reclamation Service at all?

Mr. GARFIELD. On the contrary, the statement of Mr. Smith's letter here bears out what I stated in the letter to the President, as appears in the last passage that you read, showing large areas that did not have within them any unpatented land, and therefore the withdrawals amounted to nothing. If there was no land there unpatented, the withdrawals, of course, amounted to nothing.

Mr. VERTREES. Does he not inclose you the statement that he had given to the press, showing that while that is true—and it is in part due to that—that the greater part was due to the other fact?

Mr. GARFIELD. Yes, sir; and I take exception to that statement in the press. As I afterwards told Mr. Smith, when I went to see him, I thought it was an unfair statement; that it was, seemingly to me, issued for the purpose of discrediting the action of the previous administration, and was not a fair statement of what occurred. Thereafter I sent to Mr. Davis and got the entire records of withdrawals and restorations. Mr. Davis told me what the facts were relative to them, and from the statements made by him to me and from my investigation of the records themselves sent I reached the conclusion stated in

my letter to the President, and I have since seen nothing on which to change my judgment in relation thereto.

Mr. VERTREES. The particular thing I want to ascertain is whether Mr. Smith made any statement to you different from what he makes in this statement?

Mr. GARFIELD. He was unable to explain to my satisfaction the differences.

Mr. VERTREES. Wait a moment; we will get to that. What I want to ascertain is whether he made any statement to you since that was made and that publication sent to you that was different; and if so, when and where did he make it?

Mr. GARFIELD. I met Mr. Smith in New York, and I spoke to him about this matter, calling his attention to the fact that the reason the Geological Survey was asked to take up this question of the withdrawals, was not that stated in the President's letter nor that implied in the letter which you have just read, but that, as I understood it, the fact was that the Reclamation Service was directed to first restore all of these withdrawals that I had made, and thereafter to begin to rewithdraw; that he was then called upon by the Secretary of the Interior in conference with an officer of the Reclamation Service and asked whether or not he had any available funds that might be used for the examination of water-power sites. Then I said to him that I understood that at that interview the letter that had been directed to the Reclamation Service was changed and directed to the Geological Survey, and Mr. Smith made answer to me, "Well, I can only say that I do not go back of the record." That did occur, but he said for what reasons he did not know.

Mr. VERTREES. Now, Mr. Garfield, will you answer my question? It was whether or not Mr. Smith made any statement to you different to the statement he makes in that letter and that publication?

Mr. GARFIELD. No, sir; but he explained them by saying that he did not think they were susceptible to the interpretation I put upon them.

Mr. VERTREES. You mean an interpretation that it was a reflection upon you or your administration?

Mr. GARFIELD. That it was an unfair statement of what had occurred.

Mr. VERTREES. In other words, he stood to it?

Mr. GARFIELD. In other words, he stood to the fact that he thought it was a fair statement, and I thought it was an unfair statement.

Mr. VERTREES. He denied that it was a reflection upon the previous administration or on your administration?

Mr. GARFIELD. He said he did not intend it to be a reflection upon the preceding administration.

Mr. VERTREES. But he stood to the statement as made?

Mr. GARFIELD. We did not discuss the details of the statement.

Mr. VERTREES. Then he did not make any statement different from these statements?

Mr. GARFIELD. Only to the extent that I have stated.

Mr. VERTREES. To the extent that he did not mean or intend to reflect upon the previous administration?

Mr. GARFIELD. That he did not intend to reflect on the previous administration.

Mr. VERTREES. We understand that now. Please go back to that letter to the President, page 1233 of the record, and about the fourth of the way down occurs this paragraph:

Within a few days after Secretary Ballinger assumed office he stated, in conversation with officers of the Reclamation Service, that these withdrawals were made in direct violation of law—

Meaning the withdrawals you had made; I suppose—

He gave no other reason for objecting to them. He directed the Reclamation Service to prepare lists for restoring the withdrawn lands, but to do so slowly, in order not to attract public attention.

What I wish you to explain is what is the thought you mean to convey there by the words "he directed the Reclamation Service to prepare lists for restoring the withdrawn lands, but to do so slowly, in order not to attract public attention?"

Mr. GARFIELD. That was the statement made to me by Mr. Davis.

Mr. VERTREES. I did not ask you where you got it, but what was the idea that you meant to convey there so far as his conduct was concerned?

Mr. GARFIELD. I meant to convey to the President the exact statement that was made to me by Mr. Davis, of the Reclamation Service, as to what occurred.

Mr. VERTREES. Then, I will put it differently. Mr. Garfield, what inference do you wish drawn from the fact that you state there that Mr. Ballinger ordered this to be done, but to be done slowly, so as not to attract public attention?

Mr. GARFIELD. I had no purpose other than to state the fact as given to me.

Mr. VERTREES. What did that statement mean? It meant something. So far as Mr. Ballinger's motive and purpose is concerned, what did it mean?

Mr. GARFIELD. The inference that I would have drawn from it, and did draw from it at that time, was that he did not care to draw public attention to the fact of the land that I was withdrawing.

Mr. VERTREES. Why?

Mr. GARFIELD. That is open to a variety of suggestions, I imagine.

Mr. VERTREES. The inference that you would have the President draw, is what I mean?

Mr. GARFIELD. I wanted him to know the fact. That was all, and that was the fact, as stated to me by the engineer of the Reclamation Service.

Mr. VERTREES. Did you want him to understand that there was a proper or an improper motive in doing it that way?

Mr. GARFIELD. My impression is that there was an improper motive.

Mr. VERTREES. What was it?

Mr. GARFIELD. That he did not care to have the public know that he was restoring power sites.

Mr. VERTREES. In point of fact, instead of doing it slowly, as you have suggested there, did he not do it in an open way that absolutely offended those who were opposed to him? He did it so absolutely, and did not do it slowly at all.

Mr. GARFIELD. That I can only answer as to the record, and Mr. Davis can give you the entire facts.

Mr. VERTREES. Do you not know, in point of fact, that he restored it all by general order of restoration within ten days?

Mr. GARFIELD. On the contrary, there is a great deal not yet restored. A great deal was restored in a very few days, and that caused the trouble.

Mr. VERTREES. That is to say, it was not done slowly at all; that is, that Mr. Ballinger could have it done, but did not—

Mr. GARFIELD. I was simply stating to the President what was done by Mr. Ballinger.

Mr. VERTREES. Would you state, also, the inference that you have, and I now want you to state if it is true that he did it the reverse of the way you there say that he wanted to do it?

Mr. GARFIELD. The result speaks for itself as to how he did it.

Mr. VERTREES. Do you know anything of Mr. Newell's letter to Senator La Follette, Mr. Garfield?

Mr. GARFIELD. No; I do not.

Mr. VERTREES. So I will not ask you, then, anything about that. Now, I wish to ask you something about this—

Senator SUTHERLAND. Before you pass from that subject, Mr. Garfield, I would like to ask you if all these withdrawals that you have been talking about were for power-site purposes?

Mr. GARFIELD. No, sir.

Senator SUTHERLAND. Part of them were?

Mr. GARFIELD. Part of them were for reclamation—power sites under reclamation, and they were about half and half, as I recall of the total area.

Senator SUTHERLAND. Take, for example, the withdrawal of the land on Green River, Utah, of nearly 300,000 acres—I think 298,240 acres—can you tell me what portion of that was for power-site purposes and what portion for reclamation purposes?

Mr. GARFIELD. By the record I have here, and which I made up from the withdrawals as reported to me, the Green River withdrawal was made under Form A, and that form was for reclamation purposes.

Senator SUTHERLAND. Entirely for reclamation purposes?

Mr. GARFIELD. Entirely. Three hundred and sixty thousand six hundred and forty acres.

Senator SUTHERLAND. I think it was stated here, by some one, the other day, that it was for power-site purposes, and it was difficult for me to understand that.

Mr. GARFIELD. They were all for power sites, but in connection with reclamation. They were all for power sites, but in connection with reclamation projects.

Senator SUTHERLAND. Do you understand that that body of land, of nearly 300,000 acres—which I think I am not mistaken in saying would make a strip of land a mile wide and approximately 400 miles long—could be utilized for power-site purposes on that river?

Mr. GARFIELD. It was withdrawn in that form for the purpose of giving an opportunity later of making a field examination and determining exactly what areas along the river would ultimately be available for the use and development of power, and they were made wide in order to cover the points at which it might be necessary to either flood the river, if a dam were erected, or for the purpose of transmission. The preliminary withdrawals were all made broadly, so that the field examination when finally made would make it possible to determine just what portions of those withdrawals could best be used.

Senator SUTHERLAND. Where was this body of land situated?

Mr. GARFIELD. I do not now recall the exact location. Mr. Davis has all the maps that were presented to me at that time, and he can give you the exact information on the subject.

Mr. VERTREES. Mr. Garfield, did you yourself ever examine the records of the Land Office to see how much vacant land there was within the limits of those withdrawals?

Mr. GARFIELD. I did not.

Mr. VERTREES. You took that from the reports of officers?

Mr. GARFIELD. I took that from the reports of officers.

Mr. VERTREES. Now, you have spoken of the record; I will ask you to look at page 86 of Senate document and see if those restorations made by Secretary Ballinger were not all made within practically ten days—in March and April of 1908, or thereabouts?

Mr. GARFIELD. They were made during March and April.

Mr. VERTREES. The latter part of March and the early part of April?

Mr. GARFIELD. The first one was made on March 6, and they run through until April 30.

Mr. VERTREES. March 6, did you say? Not March 6, I reckon.

Mr. GARFIELD. There was one that I recall that was made—

Mr. VERTREES. March 20 is the earliest, as I take it, and then another—

Mr. GARFIELD. March 20 and 27, and running up to April 16. I had the impression that there was one on March 6.

Mr. VERTREES. So that you would call that pretty rapid, would you not?

Mr. GARFIELD. It was within a month's time; a month and a half, or six weeks, I would guess.

Mr. VERTREES. Now, I wish to ask something about these cooperative certificates. If I have understood you correctly, this was the situation: Those reclamation projects were carried on by moneys received principally from the sale of public lands; that was the principal source of fund?

Mr. GARFIELD. The original fund.

Mr. VERTREES. And the law provided these projects should be carried on and developed from that fund?

Mr. GARFIELD. Plus the accretions that would come in later.

Mr. VERTREES. The accretions you mean when they sell the land and get paid for the water rights?

Mr. GARFIELD. Not when the land was sold, but when the water rights were paid for.

Mr. VERTREES. But the Government would get back its money in that way?

Mr. GARFIELD. It was supposed every dollar would be returned to the fund.

Mr. VERTREES. And be available then for some other projects?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. But the projects had been on hand something like eight years, had they not? Had not the department been working on them something like seven or eight years?

Mr. GARFIELD. The act was passed in 1902, and I do not recall how soon the earliest contracts had been made.

Mr. VERTREES. What I am getting at is this: You stated to the committee that many of these projects were experimental, or might be conjectural; you do not know what they would prove eventually, when you come to the question of the expense and the like. I was getting at the point that the department had had a number of years' experience on the question.

Mr. GARFIELD. We had only about a year and a half experience in the operation of any of the projects.

Mr. VERTREES. How much in construction?

Mr. GARFIELD. I do not recall the exact date. It commenced before I was Secretary.

Mr. VERTREES. For some years?

Mr. GARFIELD. Mr. Davis can give you the exact date—four or five years.

Mr. VERTREES. But the essential thing is this, that where the questions of cooperative certificates arose, if I understand you correctly, the projects had been carried out, but there was a desire to extend them, and the method was for farmers or people to organize associations and do the necessary work themselves, work and labor or furnish such material as was to be used, and for that work and labor they were to receive certificates; and these certificates go on to state that such and such amount of work and labor had been done, and were made receivable, were they not, for the dues payable by these persons who were the beneficiaries of the project, the original project, as well as the extension? Is that not correct?

Mr. GARFIELD. That is not a correct statement of the entire transaction, Mr. Vertrees.

Mr. VERTREES. Now, what is lacking in that?

Mr. GARFIELD. I can only repeat what I said this morning. Water users' associations were created for the purpose of dealing with the certificates that were already in existence. The water users' associations are necessary factors in working out any of the reclamation projects. Certificates were issued, of course, you understand. I suppose, not by the Government, but by each water users' association. The Government, through the Secretary of the Interior, under the cooperative plan, entered into a contract with the water users' associations, not with the individuals, and the water users' associations were to construct a lateral, for example, a ditch, under the engineer's direction.

Mr. VERTREES. The idea was the extension of the project?

Mr. GARFIELD. It was the extension, in so far as that particular lateral was concerned.

Mr. VERTREES. Precisely.

Mr. GARFIELD. And the work was to be done by the water users' associations. As between themselves, they were to issue these certificates among themselves, indicating how much each individual either gave in service or in material toward the completion of that portion of the project. Then the Government, instead of paying the water users' association for that contract, would deduct from the charges imposed upon the land the amount of those certificates, and therefore the charge against those particular lands would be the amount of the total cost, less the amount that had been paid in work or labor as evidenced by these certificates.

Mr. VERTREES. In the question I put to you I purposely omitted a number of details, which I did not think were essential for the purpose I had in mind, or to get the thought that I wished to get before the committee.

Mr. GARFIELD. It is impossible for me to answer it otherwise, because in your statement I think there were some essential points omitted that would have made it difficult for me to answer yes or no to your question.

Mr. VERTREES. See if this is not the bone work of the proposition: That is, what I want to get before the committee is, if the essential idea was that these projects should be undertaken by the Government, with moneys that the Government derived from the sale of land principally?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. And the Government would undertake the projects, and did undertake these, and did, we will say, complete them, and it was determined later that an extension or laterals were desirable, and the Government did not undertake itself to pay for them as it had for the projects in the first instance?

Mr. GARFIELD. On the contrary, it did exactly that thing, undertake to pay for them.

Mr. VERTREES. In money?

Mr. GARFIELD. Yes, in money; but it was a question of bookkeeping as to how it should be paid.

Mr. VERTREES. Very well; we are going to establish that it is a matter of bookkeeping. They came to an agreement with the Water Users' Association, that that association would cause the work to be done; is that not right?

Mr. GARFIELD. Yes.

Mr. VERTREES. Now, as evidence of that work, certificates were issued by the association to the parties doing the work?

Mr. GARFIELD. After it had been completed in accordance with the plans of the engineers.

Mr. VERTREES. I leave all that out.

Mr. GARFIELD. But that is an essential part.

Mr. VERTREES. I am assuming that they were not going to give them the certificates until they did the work properly.

Mr. GARFIELD. But it was a government project.

Mr. VERTREES. I understand it is a government project, and that is exactly the difficulty I am getting at, that this government project contemplated that this association would have this work done, and would issue certificates similar to that which I hand to you now, with the explanation that I will presently make. You see that there has been an alteration in the first part, but look at the bottom of it and see if that does not express the general form of certificate or duplicate order.

Mr. GARFIELD. That, I believe, is the form of certificate.

Mr. VERTREES. I will return to it presently, and therefore will not hand it to the stenographer at present.

Now, if the Government had had ample funds, as I understood you to say to the committee at the outset, to construct these extensions, why was not that money used? Why make an arrangement of this sort?

Mr. GARFIELD. The reason was this: There was ample funds on hand. If I had made, or entered into a contract with the Water Users' Association to pay cash for these laterals which they built, then under the ordinary terms of the act that money would have been returned to the reclamation fund in the ten-year period, one-tenth being paid each year, and the full amount of the cost of the project would have been charged against the land. I did not care to make any further allotment of that character, because there were requests from a number of different projects, and I did not care to make further allotment in that manner; but when the Water Users' Association said, "We will agree to enter into an agreement with you by which this money that is to be expended for the construction of these laterals will not leave the Treasury of the Government, and we will do the work, and then in one or two years' time turn in the certificates as a reduction in the charge to be made against the land," I considered that a good business proposition, because it made it possible for me to use that money in the fund by setting it aside for that purpose and obtaining a refund to the fund, which would be a bookkeeping transaction, in a shorter period of time. In other words, it was simply good business to get the work constructed that way, rather than under the ordinary form.

Mr. VERTREES. When you say there were a number of applicants for this character of work—that is, for extensions, and you did not care to do it on that ground, do you mean by that that the number was such that it probably would have absorbed your fund, and you would not have had any?

Mr. GARFIELD. By no means. The number of applications from water users' associations—I do not recall the exact number—there were enough so that the total amount of the certificates which were authorized approximated \$915,000.

Mr. VERTREES. You mean those that were absolutely used?

Mr. GARFIELD. No; all those were not used. I am informed that only seven hundred and fifty thousand were used.

Mr. VERTREES. But now it comes back to this, that when these water users' associations did do this work, and these certificates were issued, those certificates were receivable, were they not, in payments; that is, as a credit for whatever any person in the project owed the Government?

Mr. GARFIELD. They were the method of reducing the charge upon the land affected.

Mr. VERTREES. But that is a credit after all. Instead of paying the money he could present that certificate in place of it and pay what he owed on this ten-year debt.

Mr. GARFIELD. On the contrary, these were not to be presented to the land officers at all—

Mr. VERTREES. How were they to be taken care of?

Mr. GARFIELD. They were to be taken care of by the reclamation engineer, and the reclamation engineers fixed or recommended to the Secretary to fix the charge for water that is to be imposed upon the land.

Mr. VERTREES. But they could be used in payment of those charges?

Mr. GARFIELD. Pardon me. The Secretary then would fix the amount that was due upon those lands, and the cash balance would

be paid to the receiver in that particular land district. These certificates were never to be used as payment to the register or to the receiver, but they were to be used as a bookkeeping transaction between the officers of the Reclamation Service and the water users' associations.

Mr. VERTREES. In other words, the water user would be charged so much, would he not?

Mr. GARFIELD. How do you mean?

Mr. VERTREES. For the use of the water.

Mr. GARFIELD. No; not for the use of the water.

Mr. VERTREES. What would you charge him for—construction charge, then, or whatever you call it?

Mr. GARFIELD. The total cost—

Mr. VERTREES. The essential thing was, he would have to pay, would he not, over a series of ten years, a certain amount of money per annum?

Mr. GARFIELD. The total cost of the project when finally completed was divided in proportion to the acreage under the project, and that charge was charged against each acre of land.

Mr. VERTREES. Each acre of land?

Mr. GARFIELD. Yes. Under the projects that had the Water Users' Association agreement, the total charge apportioned against the land would be reduced by the amount of the outstanding certificate.

Mr. VERTREES. You have anticipated me just a little.

Mr. GARFIELD. Then we will shorten the examination.

Mr. VERTREES. I do not think so by that. I think we will shorten it if you will just answer my questions. The charge was apportioned and each man would have to pay—the owner of these acres—his part of the annual charge?

Mr. GARFIELD. Whatever was charged against him; yes.

Mr. VERTREES. Whatever it was?

Mr. GARFIELD. Yes.

Mr. VERTREES. And if there were no certificates out it would be so much money payable by him?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. But instead of paying money, he could bring up these certificates and get credit for them?

Mr. GARFIELD. The land, in the case of the certificates—the amount would have been reduced to the amount of the outstanding certificates.

Mr. VERTREES. That is to say, he would get credit—

Mr. GARFIELD. No, he would not get credit; the land would get credit.

Mr. VERTREES. The owner of the land would get credit?

Mr. GARFIELD. No; the land itself.

Mr. VERTREES. The land would get the credit?

Mr. GARFIELD. The land does not pay the money.

Mr. VERTREES. That is what I thought a while ago, that the man paid it, and therefore the man got the money?

Mr. GARFIELD. There is an unnecessary confusion in your mind regarding that.

Mr. VERTREES. Wait a minute, and let us see if there is. I will ask you with reference to the certificates, were they payable to any particular person?

Mr. GARFIELD. I have forgotten the form.

Mr. VERTREES. Is it not true that not one of them was ever payable to any particular person?

Mr. GARFIELD. I do not recall how that form was.

Mr. VERTREES. Assuming that this is the form, look at it again and see if they are payable to anybody, and then state to the committee if they were not assignable, so that any person against whom there was a charge as a water user in the manner you have described could not take those certificates and get credit for them on that particular project.

Mr. GARFIELD. The regulations that were issued explain in detail the methods by which these certificates could be used, after having been issued by the water users' associations. I do not recall the details of those regulations. They will speak for themselves.

The CHAIRMAN. Mr. Vertrees, I shall be glad to have you put that certificate in at this part of the record, so that we can see it.

Mr. VERTREES. With this explanation I would like to say that—and I think Mr. Garfield will understand it—the form of the certificate, Mr. Chairman, which has been furnished to me, and it seems the form they used was this, that there were two certificates issued, one an original and one a duplicate, and they contained certain statements, but the original contained a statement like this:

REGISTERED.

The duplicate of this certificate has been registered in the local office of the Reclamation Service. This certificate will have no value unless found to be an exact copy of registered duplicate.

I assume from that, that the two being exactly alike, one was issued, signed by the secretary of the association, and the other was registered in the register's office and certified by, or rather registered by, the engineer in charge representing the Reclamation Service. Now, the reason why I wish to make the explanation is that I find that this certificate which I have in my hand was the Salt River Valley Water Users' Association, Salt River Project, Arizona, but pasted over that name, on the upper one, evidently being furnished for some purpose down there, another name, the "Williston Water Users' Association, of Williston, North Dakota," but they were both alike, and this certificate was for the Salt River Valley Water Users' Association, and one was issued and the other written and registered.

Senator PURCELL. Salt River is not in North Dakota.

Mr. VERTREES. Arizona, I should have said. They are printed on the same sheet of paper, and they are then torn apart, and I wish to put them in now with that statement of explanation, and these papers in evidence, with the statement that it is not issued to any person and not payable to any particular person, and I also ask Mr. Garfield if they were not assignable and transferable?

Mr. GARFIELD. I believe they were; yes, sir.

Senator SUTHERLAND. But, Mr. Garfield, the certificate issued for one of these projects could not be transferred and used for a different project?

Mr. GARFIELD. Oh, no; they could not, and they were not assignable in the sense that they were collectible in cash. They could only be

used by the owner of land for the reduction of the land charge, as I have indicated.

Mr. VERTREES. Now, do you know, as a practical working of this system, with respect to these cooperative certificates, that they were put upon the market, bought and sold, and frequently sold at a large discount?

Mr. GARFIELD. I have heard that there were transactions in them.

Mr. VERTREES. As low as 40 or 50 per cent?

Mr. GARFIELD. I do not know what the prices are at all.

Mr. VERTREES. And at any rate, at a considerable discount?

Mr. GARFIELD. No; I do not know whether at a considerable discount or not.

Mr. VERTREES. At a discount?

Mr. GARFIELD. I do not know.

Mr. VERTREES. You have heard?

Mr. GARFIELD. I have heard, but I do not know.

The CHAIRMAN. Those certificates are admitted in evidence.

(The certificates are as follows:)

\$40.00. [Obverse.] Certificate No. _____

WILLISTON WATER USERS' ASSOCIATION.

This certificate, issued this ____ day of ____, 19__, is evidence that work has been done or materials or supplies furnished for Williston project, North Dakota, to the value of forty dollars. The said amount will be credited on the installments due or to become due for a water right on lands held or entered under the said project under the reclamation act. Such credit may be allowed separately for the portion of the installment on account of the building charge or on account of the portion of the installment for operation and maintenance on such lands for the current or prior years, and for operation and maintenance for subsequent years, subject to future determination of the amount of such operation and maintenance charges. This certificate, if lost, can not be replaced, and if altered in any way will not be accepted.

Registered: The duplicate of this certificate has been registered in the local office of the Reclamation Service. This certificate will have no value unless found to be an exact copy of registered duplicate.

[CORPORATE SEAL.]

WILLISTON WATER USERS' ASSOCIATION,
By _____, Secretary.

_____ Certificate No. _____

This duplicate has no redeemable value.

SALT RIVER VALLEY WATER USERS' ASSOCIATION.

[Duplicate.]

This certificate, issued this ____ day of ____, 19__, is evidence that work has been done or materials or supplies furnished for Salt River project, Arizona, to the value of ____ dollars. The said amount will be credited on the installments due or to become due for a water right on lands held or entered under the said project under the reclamation act. Such credit may be allowed separately for the portion of the installment on account of the building charge or on account of the portion of the installment for operation and maintenance on such lands for the current or prior years, and for operation and maintenance for subsequent years, subject to future determination of the amount of such operation and maintenance charges. This certificate, if lost, can not be replaced, and if altered in any way will not be accepted.

SALT RIVER VALLEY WATER USERS' ASSOCIATION,
By _____, Secretary.

Registered, _____, 19__.

Engineer U. S. Reclamation Service.

Not good for more than five (\$5) dollars.

[Reverse.]

[Certificate for \$40.00. Williston project.]

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Mr. VERTREES. Now, you have spoken of the opinion of the Attorney-General with reference to these certificates, and I believe you have given the copies of the opinion of the Attorney-General in evidence. Did you give one of the comptroller?

Mr. GARFIELD. I do not know what was in that file.

Mr. PEPPER. Yes; that is in the file.

Mr. VERTREES. I will ask you to state to the committee if both the Attorney-General and the comptroller do not say and hold that these schemes are unlawful and invalid, because it is a form of appropriation of public money that is not allowable under the statutes?

Mr. GARFIELD. The Attorney-General does not hold that.

Mr. VERTREES. Does the comptroller?

Mr. GARFIELD. I do not recall the comptroller's opinion.

Mr. VERTREES. The Attorney-General's opinion will speak for itself. I call your attention to one or two statements in the opinion of the Attorney-General, Mr. Garfield, and I will ask you if the opinion of the Attorney-General does not conclude this way—

Mr. GARFIELD. Which one is that, the first or the second?

Mr. VERTREES. Of September 8 [reading]:

I find no authority whatever under any statute for any officer to permit such a reduction as a set-off against an amount due to the United States on account of the charges referred to. But it may well be that the reasons for embarking upon such a cooperative scheme, which are set forth by the director in his communication, would appeal to the legislative branch of the Government. They can not, in my opinion, operate to extend the statutory authority of the head of the department to make contracts for which "the necessary funds" are not available in the "reclamation fund" as constituted by the act of Congress.

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Mr. VERTREES. Did not the second opinion say it made no difference whether there were funds available or not available?

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Mr. VERTREES. Yes [handing second opinion to witness]. And does he not make it turn upon the terms of the statute and the act of Congress, and not upon the question of whether the funds are available or not available?

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Mr. FINNEY. It was the second opinion.

Mr. GARFIELD. Yes.

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Mr. GARFIELD. In the second opinion the Attorney-General says—that is on page 77 of this record [indicating] [reading]:

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Mr. VERTREES. You received a telegram from him or a letter, one stating that he wished to see you on some matters?

Mr. GARFIELD. Yes, sir.

Mr. VERTREES. And he did appear at your house?

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Mr. VERTREES. That is all the conversation?

Mr. GARFIELD. That is all I recall regarding it. I have gone over the record and endeavored to refresh my recollection, but that is as much as I can recall.

Mr. VERTREES. The original affidavit he presented to you, you have already brought to the attention of the committee, and I will ask you if it does not bear this indorsement upon it on the back:

Ballinger, Ronald, Battle and Tenant, Attorneys at Law, Alaska Building, Seattle.

Mr. GARFIELD. It does; yes, sir.

Mr. VERTREES. And he delivered that affidavit to you?

Mr. GARFIELD. Yes, sir; he did.

Mr. VERTREES. And you yourself sent it off to the proper department in Washington?

Mr. GARFIELD. I sent it to my secretary.

Mr. BRANDEIS. It was the secretary, Mr. Vertrees, who sent it to the department. Mr. Brown, Mr. Garfield's secretary, sent it to Mr. Carr, who was then the secretary of the commissioner.

Mr. VERTREES. But it would be filed, of course, not in the Secretary's office, but in the Land Office?

Mr. GARFIELD. In the Land Office.

Mr. BRANDEIS. I think it appeared that Mr. Brown was in West Mentor then with Mr. Garfield.

Mr. VERTREES. His only remark was, then, to take it and file it for what it was worth?

Mr. GARFIELD. Yes; as I recall it. That is the impression he left—

Senator PURCELL. Would that be filed in this case? Would it be one of the papers in this case?

Mr. GARFIELD. That is an original file in the Land Office, as I understand it; that is where it should be.

Mr. VERTREES. Did he ever speak to you again on the subject, that you recall?

Mr. GARFIELD. I think not.

Mr. JAMES. Did Mr. Ballinger stop at your home in Ohio to see you on the way to Washington, or had he been to Washington to see you and then went to Ohio from here?

Mr. GARFIELD. I think he came from New York to see me.

Mr. JAMES. From New York?

Mr. GARFIELD. From New York; yes, sir, to see me.

Mr. JAMES. He didn't stop on his way from Seattle to New York?

Mr. GARFIELD. No, he had been in New York and came back to Mentor.

Mr. VERTREES. That is all, Mr. Garfield.

The CHAIRMAN. Are you through, Mr. Vertrees?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. Are you through, Mr. Brandeis?

Mr. BRANDEIS. There is one question I omitted to ask him. You said, Mr. Garfield, in answer to my question, that you believed that the statement contained in that affidavit of September 4, which Mr. Ballinger had presented to you—to the effect that the Cunningham claimants had no contract with the Guggenheim syndicate or any other syndicate or persons for the present or future disposition of these claims—was entirely inconsistent with the contract given by

the committee of Cunningham claimants to Daniel Guggenheim, which option was accepted under date of December 7?

The CHAIRMAN. You have asked that question and he has answered it.

Mr. BRANDEIS. I asked him to state why he says and wherein that affidavit is entirely inconsistent with the contract made by the acceptance of December 7, 1907.

Mr. GARFIELD. May I have a copy of that hearing before the committee? Speaking from memory—we have not a copy of the option here—I think the inconsistency, Mr. Brandeis, is this, that the option did purport to give to the Guggenheim syndicate the right to purchase half of the Cunningham interests and did give to the Morgan syndicate a half interest in a company that was to be organized, and, furthermore, made provision for the sale to the Guggenheim syndicate of coal for the use of the railway, and therefore it was wholly inconsistent with the statement made by Clarence Cunningham in his affidavit that there was no interest, direct or indirect, given to the Guggenheims or any other syndicate. There was in fact at that time the outstanding option which had been accepted in the preceding December.

Mr. GRAHAM. What is the date of that agreement between the Cunningham committee and the Guggenheim syndicate?

Mr. GARFIELD. July 20, 1907.

Mr. BRANDEIS. The option was accepted December 7. That appears on the next page.

Mr. GARFIELD. Yes, sir; accepted December 7.

Senator FLETCHER. When was the order clear listing them made?

Mr. BRANDEIS. The order, I think, was the 20th of December, immediately after the acceptance.

Mr. JAMES. Mr. Cunningham, after he entered into this option with the Guggenheim syndicate, was it before he made these affidavits to the effect that nothing of that sort existed?

Mr. GARFIELD. I beg your pardon.

Mr. JAMES. I say, when this option was accepted by the Guggenheim people upon this land, was that before these affidavits were made?

Mr. GARFIELD. Yes, sir; the first affidavit was made to Mr. Glavis on March 6, 1908; the second affidavit was made in September, 1908, and the option had been given July 20, 1907, and exercised December 7, 1907.

Mr. JAMES. Then when he swore that nothing like that existed, that was a statement which was false, was it not?

Mr. GARFIELD. I think so.

Mr. JAMES. Now, then, how long does it take to bar a case of perjury or false swearing like that?

Mr. GARFIELD. I do not recall what the statute of limitation is.

Senator FLETCHER. It was not an affidavit made in any proceeding in any court of law; it was an ex parte affidavit, and the party making it is not subject to prosecution for perjury.

Mr. JAMES. For false swearing he would be.

Mr. MADISON. Mr. Cunningham repeated that statement in the affidavit he filed with you, did he not?

Mr. GARFIELD. Yes, sir; he did. He made it stronger.

Mr. MADISON. You were the Secretary of the Interior?

Mr. GARFIELD. I was.

Mr. MADISON. A proceeding was pending whereby he was asking for a patent to those claims. That is true, is it not?

Mr. GARFIELD. It is.

Mr. MADISON. And this affidavit was filed, and intended to be filed, with the Department of the Interior in order to influence its action, was it not?

Mr. GARFIELD. For no other reason can I conceive of its being filed.

Mr. MADISON. If that is not perjury under our statute, we ought to have a new statute.

Senator FLETCHER. That is another affidavit you are speaking about.

Mr. MADISON. There can not be any question about that being an affidavit filed in a proceeding before a department of the United States for the purpose of influencing official action. If that is not perjury we ought to have a statute to cover it.

Mr. JAMES. If we have no statute to punish the offense of swearing like this in order to get public lands, there ought to be one enacted, do you not think so?

Mr. GARFIELD. I think so. Both affidavits were filed in a proceeding before the Interior Department.

Mr. BRANDEIS. Did Mr. Ballinger tell you that he, himself, had drawn this affidavit of September 4, which he presented to you, or had suggested the amendment which was therein contained to the original affidavit?

Mr. GARFIELD. No; he did not.

Mr. BRANDEIS. You did not know that he had drawn it or had suggested that amendment until you read it in Senate Document 248, after it had been printed under an order of the Senate?

Mr. GARFIELD. That was when it was first brought to my attention, that I had knowledge of it.

The CHAIRMAN. Is that all?

Mr. PEPPER. The present idea is that I have no questions to ask on redirect examination, Mr. Chairman. Perhaps if we adjourn I can look over Mr. Garfield's testimony and if I have any questions I can ask them in the morning.

Mr. BRANDEIS. I desire to call attention in connection with the decision, on page 68, Secretary Ballinger's letter to the President. At the end of the fourth paragraph he says, after speaking of having told certain things to Mr. Cunningham:

And at a subsequent date, which I do not now remember, suggested an amendment to his former affidavit, which he made by explaining in detail what he meant by certain terms used in his former affidavit.

The CHAIRMAN. Whose testimony was that?

Mr. BRANDEIS. That is Secretary Ballinger's letter to the President under date of September 4.

Senator SUTHERLAND. What are you reading from?

Mr. BRANDEIS. It is on page 68, at the end of the fourth paragraph.

The CHAIRMAN. Of which document?

Mr. BRANDEIS. Senate Document No. 248.

The CHAIRMAN. That is all, Mr. Garfield.

(The witness was thereupon excused.)

The CHAIRMAN. You may call the next witness.

TESTIMONY OF MR. ARTHUR P. DAVIS.

Mr. DAVIS. Before being sworn I want to ask one question. I am here at the request of some one who telephoned me from here, and I prefer not to testify in this case unless the committee very much desire it, and I want to ask the chairman if it is the desire of the committee itself?

The CHAIRMAN. I will say, Mr. Davis, that you are called as a witness here on behalf of counsel for Mr. Pinchot, Mr. Pepper, and at his instance the committee have invited you to come, as we have asked all other witnesses to come, and you are here practically at the invitation or request of the committee, made at the instance of counsel for Mr. Pinchot.

Mr. DAVIS. I asked the question because I had received no subpoena, and wanted to know.

The CHAIRMAN. You do not care about that matter; we can of course serve a subpoena on you, but if you are ready to go on I will swear you.

(Arthur P. Davis, having first been duly sworn by the chairman, testified as follows:)

Mr. PEPPER. Your present residence is where, Mr. Davis?

Mr. DAVIS. Washington, D. C.

Mr. PEPPER. And your present official position is what?

Mr. DAVIS. Chief engineer of the Reclamation Service.

Mr. PEPPER. Will you state briefly how long you have been in the government service, and what the positions are which you have in succession held?

Mr. DAVIS. My first engagement with the United States was on the 15th of August, 1882, and I have been continuously in the government service ever since, twenty-seven years and a half. My first office was assistant topographer in the Geological Survey. I held that a couple of years and was promoted to topographer, and continued as topographer in the Geological Survey until 1894. Then I was transferred to the hydrographic branch and appointed hydrographer, and continued as a hydrographer until the passage of the reclamation act and the organization of the Reclamation Service, when I was made engineer, with the title of principal engineer in the Reclamation Service, and held that with a change in title to assistant chief engineer, until March, 1907, at which time the chief engineer was made director, and I was made chief engineer.

Mr. PEPPER. Did you go more recently to Panama with the President as a consulting engineer?

Mr. DAVIS. January, 1909, I went with the then President-elect, Mr. William Howard Taft, and the other members of the Board of Consulting Engineers to review work at Panama, with special reference to the Gatun dam, and reported in February, in conjunction with other members of that board, to the President (President Roosevelt), and in a few days went to Porto Rico on a detail as civil engineer of the Government at Porto Rico for irrigation work there. I returned from that assignment on the 16th day of March.

Mr. PEPPER. Of 1909?

Mr. DAVIS. 1909.

Mr. PEPPER. Mr. Davis, you have referred to the Reclamation Service as the service of which you are an official. Now, would you

be good enough to state briefly to us just what that service is, what the scope and purpose of the service is?

Mr. DAVIS. The Reclamation Service was established by act of Congress approved the 17th of June, 1902, for the purpose of construction of irrigation work in the West, by the use of the funds received from the sales of public lands in the Western States and Territories. It was placed by the law under the jurisdiction of the Secretary of the Interior, who, upon the passage of the law, put the work in charge of the Director of the Geological Survey, Mr. Walcott, and the work was started very soon after the passage of that act in surveys and investigations of the West. Mr. Walcott, continued as Director of the Reclamation Service, so that it was practically a part, although not legally so, but in practical effect it was part of the Geological Survey until 1907, nearly five years, and at that time Director Walcott was made Secretary of the Smithsonian Institution, and Mr. Newell, then chief engineer of the Reclamation Service, was made Director of the Reclamation Service, and it was separated from the Geological Survey.

Mr. PEPPER. And that is its present legal status?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Can you summarize the work which the service at present has underway, or if it has completed work, what work it has completed?

Mr. DAVIS. The Secretary of the Interior, by means of the Reclamation Service, has investigated a large number of projects in the West, somewhere between fifty and one hundred, I suppose, and approved about twenty-seven of them. I say about because it is rather an arbitrary matter to define the limits of a single project—and that is what we call it—and the work has been started on all of these, and some of them have been practically completed and some of them have been partially completed, and irrigation has been started on more than half of them.

The CHAIRMAN. Let me ask you right there, Mr. Davis, Has work been initiated or completed on all of the projects that have been approved?

Mr. DAVIS. I think, technically speaking, there is one that has been approved that no work has been done upon except surveys.

The CHAIRMAN. I mean work other than surveys. I mean work in construction.

Mr. DAVIS. Yes, sir. I refer to the Greenfield project, which I understand Secretary Ballinger approved.

The CHAIRMAN. Aside from that, all the others are either complete or in progress of completion?

Mr. DAVIS. Complete or in progress; yes, sir.

Mr. PEPPER. Was the Gunnison tunnel part of the work of the Reclamation Service?

Mr. DAVIS. Yes, sir; the Uncompahgre project provides for the diversion of the Gunnison River into the Uncompahgre valley, which requires a tunnel of about 30,000 feet in length, which has recently been driven through and which is now being finished, the lining, etc., its completion, and its various details.

Mr. PEPPER. Will you state to the committee in outline what the organization of the Reclamation Service is?

Mr. DAVIS. The law places all the power of the Reclamation Service in the hands of the Secretary, and he appoints all of the employees of

the service and they are headed by a director. You do not want the names?

Mr. PEPPER. No, sir; I want you to give the scheme of organization as it has been officially promulgated and exists to-day.

Mr. DAVIS. The Director of the Reclamation Service reports to the Secretary of the Interior, and under him is an office force in Washington transacting such business as is proper to Washington. There is a drafting division, a correspondence division, a bookkeeping division, and an accounting division. Then there is a branch office in Chicago, a branch of the Washington office, which reports to the director, and that office is engaged mainly in dealing with the railroads. The western railroads nearly all headquarter in Chicago, and they have dealings there mainly in the routing of shipments and settlements of accounts, which of course are large. There is another sub-office in Denver, located there for the convenience of the work, like the one in Chicago is; it is just a very small one and has to do with the tests of cement. Those two are branches; you might consider them branches of the Washington office. And then the arid region is divided into six districts or supervisory divisions, each of which is under a supervising engineer and in each of which are two or three more different projects. The divisions are selected partly from the convenience of access and the relation that the various features of the work bear to each other, and these supervising engineers have under them project engineers who have individual charge of the various projects; and under the project engineers are the engineers and assistant engineers and others who are required for service on the projects in the construction and operation of these projects.

Mr. McCALL. Mr. Pepper, do you think this is material to any issue before the committee; that is, the organization of this particular service?

Mr. PEPPER. I do not wonder you ask the question at the present time.

Mr. McCALL. You are a good while getting down to facts.

Mr. PEPPER. I realize that, sir, but I think it will become material as the examination progresses.

Mr. McCALL. Very well, if it will become material.

Mr. PEPPER. One of the matters which it will be necessary to develop before the committee has relation to the organization and work of the Reclamation Service, and I simply want at this stage a general statement of what that scheme of organization is. Now, then, Mr. Davis, I am going to ask you presently about what the Reclamation Service did in this matter of power-site withdrawals which have been testified to before the committee, but before I do so I want to ask you individually what your western experience has been in the study of the rivers and streams in the public domain?

Mr. DAVIS. I first went on western work in 1883, the spring of 1883, about six months after my entrance into the service, and with the exception of about three years that has been spent on work in connection with the Isthmian Canal, my work has been mainly and almost entirely in the West. The first five years was exclusively on topographic work, and on the passage of an appropriation for irrigation service in 1888 I was put on that work; that was part of the General Survey, called the "irrigation survey." I continued as it lasted, and when that came to an end I

continued in similar work in connection with the Geological Survey and the hydrographic work. I was transferred to hydrographic work proper and solely in 1897, and it had to do with the selection of reservoir sites and some matters relating to irrigation between 1888 and 1894.

Mr. PEPPER. Reference has been made here to a wealth of hydrographic and other material relating to these rivers in the public domain that has been accumulated in the Geological Survey, as distinguished from the Reclamation Service. Do you know the circumstances under which certain data were acquired by the Geological Survey?

Mr. DAVIS. Yes, sir; that work was started by Mr. Newell and others. I mean he was one of the members of a corps under which the work was started in the fall of 1888. He continued in connection with that work right along, and in 1894 was placed in exclusive charge of it, and continued in charge of it up to about March, 1907, when the Reclamation Service was separated from the Geological Survey. That work, with the exception of three years, was all done under Mr. Newell's charge.

Mr. PEPPER. Had you any relation to that work personally?

Mr. DAVIS. From 1894 to 1907 I was also connected with it as Mr. Newell's principal assistant.

Mr. PEPPER. I show you page 86 of the Senate Document No. 248 and direct your attention to the tables printed on that page, which purport to show, among other things, withdrawals made by Secretary Garfield of lands believed to be valuable, as containing power sites. One of those tables refers to withdrawals under reclamation act, and the other to withdrawals under the so-called "supervisory power." Do you see the tables I refer to?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. I will ask you to run your eye over the rivers and streams mentioned in those tables and state whether or not those are among the rivers and streams with which you have become familiar personally, in the way you have described.

Mr. DAVIS. Most of them; not all. My familiarity with a few is confined to a study of the maps, but with most of them I have measured them and visited them and studied them in various ways.

Mr. PEPPER. Now, Mr. Davis, can you tell this committee what orders, if any, in regard to withdrawals under the reclamation act were given by the Secretary of the Interior, Mr. Garfield, in the latter part of the year 1908?

Mr. DAVIS. In connection with his order to the Reclamation Service to prepare recommendations for the department by which power sites could be withdrawn, he instructed us that this power was useful for reclamation purposes in connection with the present or prospective projects—possible projects; that it would be the policy to withdraw them under the provisions of the reclamation act.

Mr. PEPPER. And what was the meaning of that instruction as you understood it or interpreted it?

Mr. DAVIS. It was not very definite, and I understood that some latitude was left to the judgment of the Reclamation Service as to the application of a reclamation act to those withdrawals. My idea was that in the major portion of the West the power possibilities could in most cases be used partly for pumping water from rivers upon lands

in the vicinity, and we adopted the rule that we would only submit for withdrawal under the provisions of the reclamation act not all of those that could be used perhaps for reclamation purposes, but that there was that possible use or another which was considered one of the essentials of the Secretary's instruction; that is, on streams where he had reclamation projects already started, so that we were interested in the water right, it was desirable that the Secretary have a close hold of those water rights. So we adopted the plan that where power sites existed upon a stream on which we had one or more projects we would withdraw those under the provisions of the reclamation act.

The CHAIRMAN. Were those instructions verbal or in writing from the Secretary?

Mr. DAVIS. I do not recall that they were ever in writing; I do not think I ever saw them in writing. I never considered the matter one of any serious moment, although I gave it some thought, but the Secretary made that suggestion and I talked it over a few times with Mr. Bean. He seemed to give more weight to it than I did—he is a lawyer and I am not—and I looked at it in a general way, that it made little difference, except as a matter of conventionality, what wording was used. If the Secretary desired to withdraw he had that legal power to do so, and could do it. That was the view I took of it.

Mr. PEPPER. Well, Mr. Davis, did Secretary Garfield ever order the Reclamation Service to make withdrawals under the reclamation act, or recommend withdrawals under the reclamation act, except in connection with reclamation projects.

Mr. DAVIS. You mean existing reclamation projects?

Mr. PEPPER. Yes, sir; existing or reasonably contemplated reclamation projects.

Mr. DAVIS. He never ordered any withdrawals under the reclamation act excepting in connection with existing or future reclamation projects. Now if any withdrawal was made—which I think is not the case—under the provisions of the reclamation act that was not legitimately connected with any reclamation project, the mistake was in the Reclamation Service and not in the Secretary's office, where he gave no orders to that effect.

Mr. PEPPER. I confine my question to withdrawals under the reclamation act. I will now direct your attention to withdrawals under the so-called "supervisory power," and ask you, in the first place, whether there is any necessary antithesis or opposition between withdrawals under the one form or under the other?

Mr. DAVIS. There is no antithesis at all. The authority under which it is withdrawn is different, presumably.

Mr. PEPPER. I am speaking of it as a practical matter.

Mr. DAVIS. As a practical matter, they both conserve power sites. I have seen in the literature on this subject the two expressions used in the reports of the Geological Survey published here, "power-site withdrawal" and "reclamation withdrawals," as though the two were different things. A power-site withdrawal may be a reclamation withdrawal, and very frequently is. In the majority of our projects we have followed development in contemplation, or the possibility of power development, with a very large number of them and we withdrew the lands that are necessary for that purpose. That was contemplated by a special act of Congress passed for the purpose of authorizing the Reclamation Service to develop power.

The CHAIRMAN. The record will show the following corrections in the testimony given by Secretary Wilson on March 1, 1910:

On page 1297, after the word "was," in second line from bottom of page, insert word "not," so as to read: "It was not intimated * * *."

On page 1298, after word "Price," in line 14, strike out word "and" and insert in lieu thereof the words "told me that," so as to read: "Mr. Price told me that Mr. Pinchot * * *."

On page 1298, line 16, insert semicolon after words "he said," so as to read: "* * * at what he said; I said, 'Did Mr. Pinchot * * *?'"

On page 1298, line 17, strike out word "yes" and insert words "He replied, 'No.'"

On page 1305, strike out word "follow" where it first occurs in the line and insert the words "have other," so as to read: "I have other things * * *."

The record will also show the following returns to calls for documents:

THE SECRETARY OF THE INTERIOR,
Washington, March 5, 1910.

SIR: In further compliance with your letter of February 12, requesting "All recommendations by the Reclamation Service to the Secretary of the Interior on and after December 4, 1908, to date, looking to the restoration of lands withdrawn for reclamation and power-site purposes," I have the honor to transmit herewith copies of restorations of lands withdrawn for "reclamation" purposes, under the following projects, which is in full compliance with paragraph 2 of the list transmitted with your said letter:

Lower Yellowstone project.....	Montana, Wyoming, North Dakota.
Madison River project.....	Montana.
Milk River project.....	Montana.
Minidoka project.....	Idaho.
North Platte project.....	Nebraska, Wyoming.
Payette-Boise project.....	Oregon, Idaho.
Pitt River project.....	Oregon, California.
Salt River project.....	Arizona.
Wapato project.....	Washington.
Williston project.....	North Dakota.
Yakima project.....	Washington.

Very truly, yours,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
*Chairman Joint Committee of Investigation,
Room 210, Senate Office Building.*

THE SECRETARY OF THE INTERIOR,
Washington, March 9, 1910.

SIR: In reply to the request contained in your letter of the 2d instant there are forwarded herewith:

1. Letters of October 6 and 17, 1905, from Special Agent Love to the Commissioner of the General Land Office; also copy of affidavit dated September 6, 1905, of David Lawrence White, and letter of October 10, 1905, from H. R. Harriman to Special Agent Love.

2. The favorable reports by Special Agent Love to the register and receiver, Juneau land office, referred to in Agent Love's report of August 2, 1907, were forwarded to your committee on February 26, 1910 (p. 1211 of the testimony).

In transmitting said reports to Chief of Field Division Christensen, under date of February 8, 1910, Register Walker, of the Juneau office, says:

"I inclose the following letters and copies of replies where copies could be found. I have made an exhaustive search among the miscellaneous letters and these are all I can find."

3. The department and the General Land Office are unable to locate any letters or reports from Special Agent Love to the General Land Office other than those above mentioned and those included in Senate Document No. 248.

Very truly, yours,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
Chairman Joint Committee of Congress, United States Senate.

THE SECRETARY OF THE INTERIOR,
Washington, March 8, 1910.

SIR: Under date of March 2, your committee requested "the original affidavit of Clarence Cunningham, dated September 4, 1908."

This affidavit is one of the principal exhibits in the hearing relating to the Cunningham claims now being conducted by the General Land Office. The affidavit, as printed on pages 131 to 135 of the list of orders, letters, telegrams, and other exhibits contained in Senate Document No. 248, and on pages 497 to 500 of Senate Document No. 248, has been compared with the original and is the same as the original, except in the following particulars:

List of orders, letters, telegrams, etc.

Page 132, eleventh line from bottom of page, word "onto" is "into" in original.

Page 134, ninth line from top of page, after the word "claims," a comma occurs in original.

Page 135, eighth line from bottom of page, word "patents" is "patent" in original. *Senate Document No. 248.*

Page 497, fourteenth line from bottom of page, word "nistrict" is "district" in original.

Page 499, twentieth line from bottom of page, after the word "claims," a comma occurs in original.

During the proceedings relating to this hearing conducted in the West, the attorneys for the entrymen permitted the introduction into the record, as an exhibit, of a copy of said affidavit, with the understanding that the original affidavit was to be subsequently substituted for the copy. The record of the hearing so far taken, as you will recall, was recently submitted under seal to your committee.

In compliance with your request, above mentioned, the original affidavit is forwarded herewith, with the suggestion that, as a copy of the affidavit has heretofore been introduced in evidence, and in order to enable the General Land Office to substitute the original for the copy now in the record relating to the hearing, as agreed upon, the said original be returned to the department as soon as it shall have served the purposes of your committee.

Very respectfully,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
*Chairman Joint Committee of Investigation,
United States Senate.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, March 8, 1910.

HON. KNUTE NELSON,
*Chairman Joint Committee of Congress
to Investigate the Interior Department and Forestry Bureau,
Washington, D. C.*

SIR: In compliance with the request contained in your letter of March 7, 1910, I have the honor to transmit herewith copies of all certificates of cross transfers from the appropriation of the Indian Office to the appropriation of the Forest Service since September 3, 1908.

Respectfully,

CHARLES D. HILLES,
Acting Secretary.

MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California

GEORGE SUTHERLAND, Utah.

ELIHU ROOT, New York.

WILLIAM E. PURCELL, North Dakota.

DUNCAN U. FLETCHER, Florida.

MARLIN E. OLMSTED, Pennsylvania.

EDWIN DENBY, Michigan.

E. H. MADISON, Kansas.

OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, Secretary.

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Acting Secretary.

MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California

MARLIN E. OLMSTED, Pennsylvania.

GEORGE SUTHERLAND, Utah.

EDWIN DENBY, Michigan.

ELIHU ROOT, New York.

E. H. MADISON, Kansas.

WILLIAM E. PURCELL, North Dakota.

OLLIE M. JAMES, Kentucky.

DUNCAN U. FLETCHER, Florida.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, Secretary.

3. The department and the General Land Office are unable to locate any letters or reports from Special Agent Love to the General Land Office other than those above mentioned and those included in Senate Document No. 248.

Very truly, yours,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
Chairman Joint Committee of Congress, United States Senate.

THE SECRETARY OF THE INTERIOR,
Washington, March 8, 1910.

SIR: Under date of March 2, your committee requested "the original affidavit of Clarence Cunningham, dated September 4, 1908."

This affidavit is one of the principal exhibits in the hearing relating to the Cunningham claims now being conducted by the General Land Office. The affidavit, as printed on pages 131 to 135 of the list of orders, letters, telegrams, and other exhibits contained in Senate Document No. 248, and on pages 497 to 500 of Senate Document No. 248, has been compared with the original and is the same as the original, except in the following particulars:

List of orders, letters, telegrams, etc.

Page 132, eleventh line from bottom of page, word "onto" is "into" in original.

Page 134, ninth line from top of page, after the word "claims," a comma occurs in original.

Page 135, eighth line from bottom of page, word "patents" is "patent" in original. *Senate Document No. 248.*

Page 497, fourteenth line from bottom of page, word "nistrict" is "district" in original.

Page 499, twentieth line from bottom of page, after the word "claims," a comma occurs in original.

During the proceedings relating to this hearing conducted in the West, the attorneys for the entrymen permitted the introduction into the record, as an exhibit, of a copy of said affidavit, with the understanding that the original affidavit was to be subsequently substituted for the copy. The record of the hearing so far taken, as you will recall, was recently submitted under seal to your committee.

In compliance with your request, above mentioned, the original affidavit is forwarded herewith, with the suggestion that, as a copy of the affidavit has heretofore been introduced in evidence, and in order to enable the General Land Office to substitute the original for the copy now in the record relating to the hearing, as agreed upon, the said original be returned to the department as soon as it shall have served the purposes of your committee.

Very respectfully,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
*Chairman Joint Committee of Investigation,
United States Senate.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, March 8, 1910.

HON. KNUTE NELSON,
*Chairman Joint Committee of Congress
to Investigate the Interior Department and Forestry Bureau,
Washington, D. C.*

SIR: In compliance with the request contained in your letter of March 7, 1910, I have the honor to transmit herewith copies of all certificates of cross transfers from the appropriation of the Indian Office to the appropriation of the Forest Service since September 3, 1908.

Respectfully,

CHARLES D. HILLES,
Acting Secretary.

THE SECRETARY OF THE INTERIOR,
Washington, March 10, 1910.

SIR: I beg to acknowledge receipt of your letter of the 7th instant transmitting a memorandum of papers desired by your committee, as follows:

"All copies and drafts now existing in the files of the Reclamation Service of a letter finally sent by the Secretary of the Interior to Governor Herrick, on or about April 10, 1909."

In compliance with the request contained in said letter, I have the honor to forward herewith letter of March 31, 1909, from Mr. Herrick to the department; copy of acknowledgment dated April 2, 1909; copy of letter dated March 25 from Mr. Bennett to Mr. Herrick; draft of proposed reply to Mr. Herrick, dated April 10, not sent; and copy of letter dated April 10, 1909, from the department to Mr. Herrick.

Very respectfully,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
Chairman, Joint Investigating Committee, United States Senate.

THE SECRETARY OF THE INTERIOR,
Washington, March 10, 1910.

SIR: In compliance with the request contained in your letter of the 28th ultimo for "All documents and correspondence relating to the conduct of the Chicago office of the Reclamation Service by Agent Perkins (from the files of the Interior Department, Reclamation Service, or elsewhere)," I have the honor to forward herewith copies of departmental files, as follows:

Reclamation Service. Office quarters. Chicago, Ill.

No. 8 23 (parts 1 and 2).

Reclamation Service. Publicity department. No. 8 47 (parts 1 and 2).

Also documents and correspondence furnished by the Reclamation Service relating to the conduct and management of said office, including monthly reports from September, 1907, to January, 1910, inclusive.

Very respectfully,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
Chairman Joint Committee of Congress, United States Senate.

The CHAIRMAN. It is now half past 5 o'clock and the committee will stand adjourned until to-morrow.

(Accordingly at 5 o'clock and 35 minutes p. m. the committee adjourned until to-morrow, Friday, March 11, 1910, at 10 o'clock a. m.)

FRIDAY, MARCH 11, 1910.

JOINT COMMITTEE TO INVESTIGATE THE INTERIOR
DEPARTMENT AND FORESTRY SERVICE,
Washington, March 11, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met, pursuant to adjournment, at 10 a. m.

Present, Senators Nelson (chairman), Sutherland, Root, Fletcher, and Purcell; Representatives McCall, Olmsted, Madison, and Graham; Mr. Paul Sleman, secretary; also Mr. Louis D. Brandeis and Mr. Joseph P. Cotton, jr., representing Mr. Louis R. Glavis; also Mr. George Wharton Pepper, representing Mr. Gifford Pinchot; also Messrs. John J. Vertrees and Carl Rasch, representing Secretary Ballinger; also Mr. E. C. Finney.

The CHAIRMAN. A quorum is present. The committee will please come to order. The examination will proceed.

Mr. BRANDEIS. Before Mr. Davis proceeds with his examination I would like to call attention to a document which was not available

yesterday and which I desired to introduce in connection with Mr. Garfield's examination.

The CHAIRMAN. What document is that?

Mr. BRANDEIS. You remember that Senator Root asked a question, which appears on page 1562 of the record in yesterday's proceedings. Senator Root asked Mr. Garfield:

Senator Root. Mr. Garfield a question was put to you about the importance of this matter. I have observed that there has been a growing appreciation of the importance or a growing estimate of value of these coal lands. I think I am right about that. Is it not a fact that there was a gradual progressive increase in the estimate of the value and importance of the coal in Alaska?

In connection with Senator Root's question I want to put in evidence the sketches or plats of the Cunningham group which were sent to Mr. Garfield by M. K. Rogers in connection with the letter that I put in evidence, but I did not then have the sketches.

The CHAIRMAN. Is that from the files of the department?

Mr. BRANDEIS. That is from the files of the department. It has been furnished since by the department.

The CHAIRMAN. Is there any objection to that, Mr. Vertrees?

Mr. VERTREES. No, sir.

The CHAIRMAN. If there is no objection they will be admitted.

Mr. BRANDEIS. You will find the letter in the record at page 168, the letter of April 8, 1908, our own record of testimony. There are two sketches, and I would like to refer to them.

The CHAIRMAN. What is the date of the letter?

Mr. BRANDEIS. The letter is dated April 8, 1908. The letter of Rogers to Secretary Garfield, and the sketch is the first sketch, sketch 1. This letter was in the original Senate document, but the sketches were not in that document. These sketches are, the first, "Cunningham group, 33 claims, 21,000 acres, 65,000,000 to 90,000,000 tons of coal above tunnel levels."

The CHAIRMAN. Well, that will go into the record.

Mr. BRANDEIS. "Estimated tons of the entire field, 500,000,000 tons." And then there is sketch No. 2, "Controller Bay coal field, Alaska. Section across Mammoth coal vein, Cunningham group, Trout Creek." That is the coal vein which is 66 feet of clean coal.

The CHAIRMAN. That is admitted.

Mr. BRANDEIS. I will then hand these to the stenographer.

(The plats in question will be found on pages 1676 and 1677.)

Mr. BRANDEIS. I also desire to call attention in connection with the discussion of the committee, particularly Senator Fletcher and Mr. James, to the perjury statute in the Revised Statutes.

The CHAIRMAN. Is not that a matter of argument that can be put in when you come to sum up the case?

Mr. BRANDEIS. I thought the committee would be glad to have a reference to the Revised Statutes which deal with the question of perjury, as it was suggested that the law ought to be changed if it is not now sufficient.

Senator FLETCHER. I would be glad to have it in.

Mr. JAMES. I think that it ought to be put in.

Mr. BRANDEIS. The first reference is section——

The CHAIRMAN. Give the sections, and then the stenographer can copy them from the statutes. There is no need to take up time reading them if they are incorporated in the record.

Mr. BRANDEIS. Revised Statutes 183, section 183.

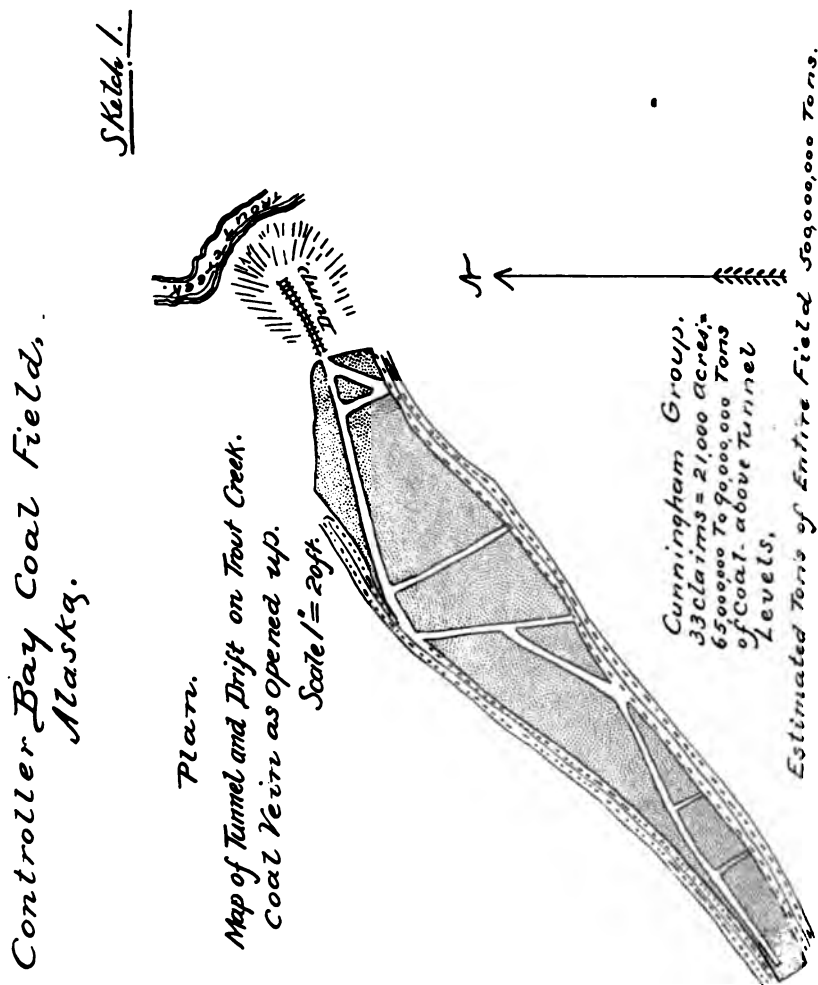
The CHAIRMAN. Of the Revised Statutes?

Mr. BRANDEIS. Of the Revised Statutes; yes, sir.

The CHAIRMAN. Now the stenographer will copy that in full right here.

Mr. BRANDEIS. And section 5392.

The CHAIRMAN. That will be copied in the record.



Mr. BRANDEIS. And section 5393.

The CHAIRMAN. And that will be copied.

Mr. BRANDEIS. These are the statutes that deal with perjury and subornation of perjury.

(The sections of the statutes are as follows:)

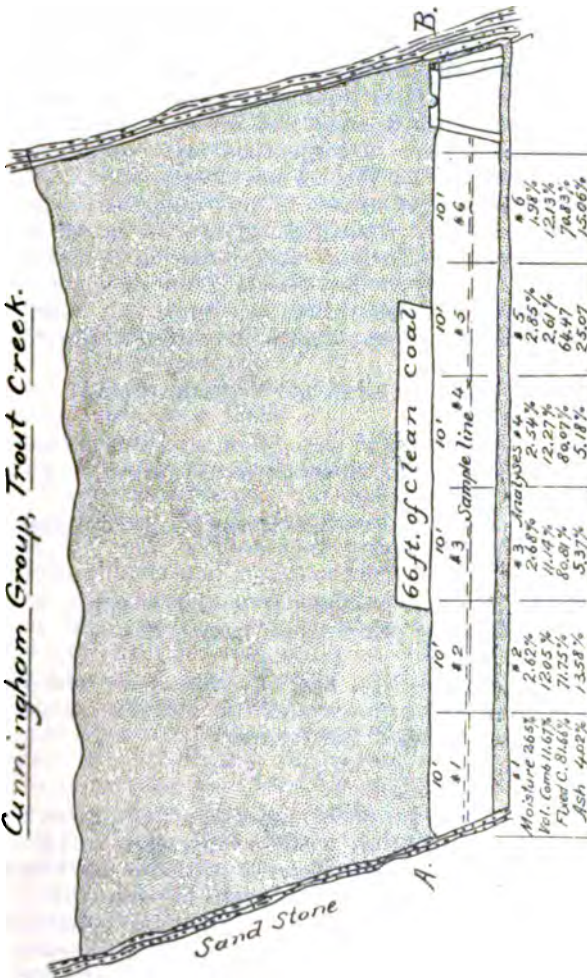
Sec. 183. Any officer or clerk of any of the departments lawfully detailed to investigate frauds or attempts to defraud on the Government, or any irregularity or miscon-

duct of any officer or agent of the United States, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine

Sketch 2.

Controller Bay Coal Field, Alaska.
Section across Mammoth Coal Vein
Cunningham Group, Trout Creek.



Section on Line A-B Fig. 1, also Analyses of
Coal arranged according to number.

of not more than two thousand dollars, and by imprisonment at hard labor not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed.

Sec. 5393 Every person who procures another to commit any perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed.

The CHAIRMAN. The examination in chief will now proceed.

Mr. PEPPER. Yes.

Mr. DAVIS. Yes, sir; there is a map showing by shaded lines the withdrawal under the first form approved by the Secretary, December 4, 1908, and restored April 6, 1909.

Mr. PEPPER. Is that the withdrawal of the North Platte River in Wyoming?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. You mean it was revoked April 6?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. This appears at page 86.

The CHAIRMAN. The North Platte River?

Mr. PEPPER. Yes, sir.

The CHAIRMAN. Under that second list?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. And will you, Mr. Davis, before the map itself is submitted for the inspection of the committee, describe briefly how that withdrawal was made, what its purpose was?

Mr. DAVIS. The purpose of the withdrawal was to control the banks of the river which might be used for the development of power, and also for diversion, and the small valleys that lie along that river which can be used for irrigation—we have a large irrigation project on that river below, and this withdrawal would materially assist in preventing interference with the project, and would make available the power, and the land along the river for irrigation and reclamation purposes.

Mr. PEPPER. When you recommended that withdrawal, was it your intention to recommend a withdrawal that might be useful in connection with reclamation projects or were you using the act for a subterfuge for some other kind of a purpose?

Mr. DAVIS. No, sir; there was no subterfuge about it. We considered these lands available for the future for reclamation purposes in the two ways I have described.

Mr. PEPPER. And how did you go about the matter of preparing the description of the area to be withdrawn?

Mr. DAVIS. That was done by examination of the Land Office state maps, and they were inspected. This particular case, I think, was inspected by myself, and I, knowing something of the character of the valley, indicated what land would probably be necessary to withdraw in order to hold it until an examination could be made to determine more exactly what lands were actually required to permanently conserve the sites.

Mr. PEPPER. Is it a fact, that from the first of these withdrawals which we are now considering to the last to be considered later, you had in contemplation subsequent field examination to check up and modify the original withdrawals?

Mr. DAVIS. Yes, sir; that I understood to be the policy. I want to say right here, Mr. Chairman, that this policy of the withdrawal of sites that is under discussion was one that was ordered by the Secretary of the Interior, not initiated by the Reclamation Service. It was ordered, as I understood it, by the deliberate policy of the Cabinet of the last administration.

Mr. PEPPER. Did you receive from the Secretary of the Interior at any time orders to withdraw under the reclamation act, lands which

were not useful in connection with past or future reclamation purposes?

Mr. DAVIS. Never.

Senator SUTHERLAND. Let me ask Mr. Davis a question there. Mr. Davis, did this withdrawal of the North Platte River in Wyoming 149, 120 acres, include any of the lands in what is known as the "Goshen Hole?"

Mr. DAVIS. No, sir; the Goshen Hole is away below there.

Senator SUTHERLAND. Entirely separate and apart from that?

Mr. DAVIS. It is to be watered from the same supply and in that sense is connected with it, but it is down the stream. This withdrawal is above the storage reservoir.

Senator SUTHERLAND. Well, was the Goshen Hole land withdrawn at the same time?

Mr. DAVIS. The Goshen Hole lands are still withdrawn; yes, sir.

Senator SUTHERLAND. What withdrawal covered the Goshen Hole lands?

Mr. DAVIS. They have been withdrawn for many years. I do not remember the date they were withdrawn.

Senator SUTHERLAND. For what purpose were those lands withdrawn?

Mr. DAVIS. Irrigation.

Senator SUTHERLAND. And these lands described on page 86 of this document, namely, 149,120 acres, were they withdrawn for irrigation purposes or for power sites?

Mr. DAVIS. Both for power sites and to be used for irrigation purposes; irrigation was a part of the purpose. The expression irrigation purposes and power sites are not antithetical, Senator. Power sites are withdrawn for irrigation purposes.

Senator SUTHERLAND. The table is headed, "Withdrawals originally made in terms of reclamation projects (stated by Reclamation Service on May 25, 1909, to have been for power purposes)."

Mr. DAVIS. Yes, sir; that heading was not written by me.

Senator SUTHERLAND. The heading is misleading then, is it not?

Mr. DAVIS. I rather consider it so. That is a matter of interpretation, however. I would not want to criticise anybody for it. I do not think there was any effort made to mislead anyone.

Senator SUTHERLAND. I do not mean it in that sense, but I want you to state the facts.

Mr. DAVIS. It is true there is no inaccuracy, but I think it confuses a little and gives a wrong impression, by implication. However, that is my own opinion, and I do not think the committee cares for my opinion. It gives the impression that power sites and reclamation purposes are antithetical, and they are not.

Senator SUTHERLAND. That is, the same land may be used for reclamation purposes and also for power sites.

Mr. DAVIS. And the power may be used for reclamation purposes; yes, sir. We are using a large amount of power for reclamation purposes now.

Senator SUTHERLAND. Is not a very large proportion of the land we are now speaking about incapable of use for power purposes, and only lands to be irrigated?

Mr. DAVIS. A portion of it is so; yes, sir.

Senator SUTHERLAND. A very large portion, Mr. Davis, is it not?

Mr. DAVIS. I think a considerable portion; nobody knows exactly how much, though.

Senator SUTHERLAND. You are familiar with the land, are you not?

Mr. DAVIS. In a general way only.

Senator SUTHERLAND. Would not say that considerably more than half of the land—

Mr. DAVIS. Of this withdrawal?

Senator SUTHERLAND. Of the land that was intended to be irrigated and used for agricultural purposes?

Mr. DAVIS. No, sir; I think not. Although there are little valleys scattered along the river which would require a survey to accurately outline, and this withdrawal was made broadly and in general terms of the section to protect it pending the examination we make in connection with the reclamation work. We make the withdrawal preceding a visit to the field for very obvious reasons.

Senator SUTHERLAND. That is all.

Senator FLETCHER. When do you expect to make your examination?

Mr. DAVIS. I think it was the plan of the Secretary to start that last spring. We made this in the winter, and my understanding was that that was to be undertaken in the spring. I did not make any very close inquiry as to what his intentions were, but that was the understanding, that the examination would be begun immediately, as soon as feasible.

Mr. PEPPER. What did you mean when you said there were obvious reasons for first making your withdrawal, and then your field examination.

Mr. DAVIS. Oh, I may just give the correct impression by relating some of our experiences. In connection with the Belle Fourche project, for instance, in South Dakota, our engineer was looking up the project, and he got a team at the livery stable, and drove out, making inquiries of course, about the country—getting a man who was acquainted with the country—looking for reservoir sites, and possibilities of storing the waters of the Belle Fourche River, and using them upon irrigable lands. The driver was well acquainted with the country and had an eye out for his best interests financially, and took a careful mental note of the inquiries and observations made by this engineer, but without learning his conclusions he guessed fairly well what his conclusions were going to be, and although the engineer when he got back to town telegraphed to have certain land withdrawn, he found that this man and his two sisters had made two desert entries inside the reservoir site, and we have had quite a number of hearings and quite a lot of expense and difficulty to get rid of those entries; and if there had been any water supply feasible, any water stored at all for those desert entries, I have no doubt at all that he would have held them and we would have had to pay for them. It was purely a case of getting in first and trying to hold the Government up, and we can not always avoid that. It is an effort to avoid that that leads us to make broad withdrawals in advance of any public information where anything of the kind is contemplated. It is necessary in the public interests.

Mr. PEPPER. Where you withdraw broadly in the way that you have described—and I am now questioning you generally with reference to the withdrawals made throughout the last winter—is it, in

your judgment, likely that the land not ultimately found to be available for power development is land very desirable for other forms of entry; in other words, does a broad temporary withdrawal work a hardship to entrymen?

Mr. DAVIS. Only to a slight extent, I think it may safely be said; not to any material extent, for a series of reasons. One is that along the western streams the topography, as a rule, in most of those streams is a valley bordered by bluffs. Any part of that valley, if the stream is used for power purposes at all, power development—any part of that valley may be required, and probably any part of that valley can be used either for the construction of canals, which take the water on a lighter grade and finally drop it down some steep cliff and there develop power, or if the power is developed by building a dam the valley will be flooded. Now, the power site is not protected. As soon as all the valley is withdrawn, if you go outside the valley you run immediately into the bluffs, which naturally are not of any value—naturally it is not of any material value at all—and it would not be any hardship to hold that a few months until you find out what the proper boundaries of the ultimate withdrawal are to be.

Mr. PEPPER. I suppose there might be exceptional cases; for instance, in the case of San Juan River in Utah, or the White River in Utah—or was there in those cases lands valuable for homesteads or agricultural entry covered by a broad withdrawal?

Mr. DAVIS. I think so. I think in most of those withdrawals some of this valley land which is necessary to conserve the power, could be used for homestead purposes, and there are a few places where the withdrawal undoubtedly ran back on the grazing land that will eventually, perhaps, pass into private ownership under operation of the ordinary land laws. I do not claim but what it interfered with settlements a little bit, but as to its being a hardship on the settlers, it is not anything like a hardship on a settler to have land withdrawn. If he can not locate it he locates somewhere else, and if the land is not open to the settler he goes somewhere else. The entries suspended is a very material hardship on the settler, of course. That is a thoroughly different thing from simply withholding it from entry.

Mr. PEPPER. Looking at the problem from the point of view of the best interests of the United States, which is the wiser course, to withdraw broadly and then pare down after field examination, or to withdraw narrowly and trust to subsequent additional or supplemental withdrawals if they are found necessary?

Mr. DAVIS. Well, our experience for the last seven or eight years in connection with these matters has led us to the policy of broad withdrawals, to be more nearly adapted to actual requirements by subsequent investigation. Our work in connection with the Belle Fourche project, our experience, indicates that that is the thing. We are frequently, even with that policy, holding out some lands that we ought to have included, simply on account of the lack of sufficiently accurate information at the time.

Mr. PEPPER. And from the point of view of the homesteader, or the agricultural entryman, is it more desirable that there should be a general withdrawal or suspension of forms of entry not yet carried to completion, than that entry should be required to be initiated and then stopped by a withdrawal when they are in mid-air?

Mr. DAVIS. I think it is a very great hardship on a settler who has entered land in good faith to make a home, or start a ranch, or for any other purpose, to have his entries suspended. The United States by holding land subject to entry is morally offering an inducement for the settlement on public lands, and when the entryman has gone to the trouble of examining the land, as he perhaps does, and the expense of making an entry, and perhaps changing his plans—he may entirely have changed his business, or something of that kind—it may be quite a serious hardship, and is in any case some hardship, on the settler to suspend an entry that is already made.

Mr. PEPPER. When you speak of an entry and the suspension of an entry, you refer of course to what is likely possible where the entry has not yet ripened into a vested right?

Mr. DAVIS. Yes, sir; that suspension of an entry can not of course occur where it has ripened into vested right.

Mr. PEPPER. And while these withdrawals that you made broadly made no specific exception of entered land, what was the understanding of your service in respect to their effect upon entered land?

Mr. DAVIS. I can best answer that question by stating what the policy of the service has been. Where land was entered and title not perfected before withdrawals are made, the entry is not suspended, but when it comes to patent, if it is within a withdrawn area, it is the practice of the Interior Department or the Land Office to submit the fact to the Reclamation Service who initiated the withdrawal, and if the Reclamation Service requires that land at a sufficiently early date to justify them in making equitable compensation—in other words, buying out the entrymen—that is done, but if the use is sufficiently doubtful or remote so that it is not considered justifiable to now make a purchase, it is passed to patent. It makes one process further in getting patent. That is all.

The CHAIRMAN. May I ask you a question there? Take settlers who have settled on land and have not yet perfected an entry by their settlement on the land, especially if it is unsurveyed land; they have secured an inchoate right, have they not, to that land?

Mr. DAVIS. Not on unsurveyed land.

The CHAIRMAN. Well, on surveyed land?

Mr. DAVIS. On surveyed land I believe that would be the legal aspect.

The CHAIRMAN. They have an inchoate right and your withdrawal would simply prevent them from making the entry that they intended to make?

Mr. DAVIS. Yes, sir.

Senator PURCELL. Would they not have a squatter's right on unsurveyed land?

Mr. DAVIS. Not against the United States.

The CHAIRMAN. Under the homestead laws and under the desert-land law they have the right to initiate, under the homestead law, on unsurveyed land?

Mr. DAVIS. Yes, sir; but that does not hold against the United States. That has been recently decided. The court of appeals decided a case for the Reclamation Service very recently on that very point, and there is plenty of precedent upholding the decision that on unsurveyed land the settler acquires no rights which run against the United States itself. It gives him preference over other settlers.

The CHAIRMAN. It gives him preference over everybody else but the United States?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Do you mean by that that the rule is different upon unsurveyed land?

Mr. DAVIS. Yes, sir; that is my understanding.

Senator SUTHERLAND. The desert-land law provides expressly, does it not, that the entry may be initiated upon unsurveyed land?

Mr. DAVIS. Certainly, and so it is. I do not know that the law especially provides that, but the settler can certainly initiate an entry on unsurveyed land. There is no question about that.

Senator SUTHERLAND. As I recall it, it provides that when the entry is made upon unsurveyed land it shall be made in a certain way.

Mr. DAVIS. He can not make entry on the unsurveyed land, but he can make settlement, which gives him a preference right for entry when that is surveyed over any other entryman, but it does not give him any right against the United States. That is the recent decision of the United States court of appeals, and there have been several others to the like effect. However, that is a question of law, and I do not claim any proficiency in that line.

Mr. GRAHAM. You show it a good deal, nevertheless, even though you do not claim it.

Mr. DAVIS. Thank you, sir.

Mr. PEPPER. Mr. Davis, referring further to the chairman's question, the withdrawals now under consideration were made in the pursuit of the policy which you have described, and which contemplates the purchase of a settler's inchoate right where that seemed fair?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. And the granting of a patent, notwithstanding the withdrawal and the purchase, was not thought desirable for the interests of the United States?

Mr. DAVIS. Where the United States is not in a position to make a purchase sufficiently prompt to do justice to the settler, the patent is allowed to pass, even though the United States may eventually want the land.

Mr. PEPPER. Now, you have called attention to your map showing the North Platte withdrawal. Can you in succession indicate in your schedule or list of maps—from your book of maps—the other withdrawals, both those that were made under the reclamation act and those in reference to power sites not relating to reclamation?

Mr. DAVIS. The next one is the Grand River in Utah.

Mr. PEPPER. That is a reclamation withdrawal?

Mr. DAVIS. That is a reclamation withdrawal. It is a strip of land on each side of the river below the point where the Rio Grande Western leaves the river and near the Utah-Colorado boundary line.

The CHAIRMAN. Mr. Davis, will you please suspend a moment? In connection with the testimony just received, speaking about the settlers here, I would like to have this section of the act of May 14, 1880, inserted into the record:

Sec. 3. That any settler who has settled, or who shall hereafter settle, on any of the public lands of the United States, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his homestead application and perfect his original entry in the United States

Land Office, as is now allowed to settlers under the preemption laws to put their claims on record, and his right shall relate back to the date of settlement the same as if he settled under the preemption laws.

Approved, May 14, 1880, (21 Stat., 140).

Senator PURCELL. On what page of the book is that?

The CHAIRMAN. It is page 151 of this circular from the General Land Office. I also desire in this connection to put in the same law in relation to desert entries, so that it will appear in the record for the convenience of the members of the committee.

(The law referred to by the chairman is as follows:)

DESERT LANDS.

[AN ACT To provide for the sale of desert lands in certain States and Territories.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any citizen of the United States, or any person of requisite age who may be entitled to become a citizen, and who has filed his declaration to become such, and upon payment of twenty-five cents per acre, to file a declaration, under oath, with the register and the receiver of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land, not exceeding one section, by conducting water upon the same within the period of three years thereafter: *Provided, however,* That the right to the use of water by the person so conducting the same on or to any tract of desert land of six hundred and forty acres shall depend upon bona fide prior appropriation; and such right shall not exceed the amount of water actually appropriated and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands, and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said section of land if surveyed, and if unsurveyed shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon making satisfactory proof to the register and receiver of the reclamation of said tract of land in the manner aforesaid, and upon the payment to the receiver of the additional sum of one dollar per acre for a tract of land not exceeding six hundred and forty acres to any one person, a patent for the same shall be issued to him: *Provided,* That no person shall be permitted to enter more than one tract of land, and not to exceed six hundred and forty acres, which shall be in compact form.

* * * Approved, March 3, 1877 (19 Stat., 377).

Mr. PEPPER. Mr. Davis, I assume that you do not care to comment further on the legal question involved in this matter?

Mr. DAVIS. No, sir; that is entirely in accordance with my opinion.

The CHAIRMAN. You may proceed. I simply wanted these laws to appear in the record in connection with this testimony.

Mr. PEPPER. Certainly. Now, Mr. Davis, the withdrawal of Grand River in Utah near the boundary line of Colorado is not a great distance from a large tract of land in Utah just west of the line that can be watered from Grand River by pumping to a considerable height. That has been in a general way investigated and found that the high-line canal from Grand River about the Utah line reaches high ground. There is a reach there, a very large tract of very fine land. That, however, is too high to reach that canal. From the storage provided on Grand River the water supply is far in excess of the available land that can be covered by gravity, and there is now under construction a large pumping project—using waterpower for pumping which is exactly parallel with the scheme that they contemplate now, in connection with a private enterprise on the other side of Grand River—that is on the south side of Grand River, and not far from this is the heading.

Senator SUTHERLAND. Is it a single body of land?

Mr. DAVIS. Yes, sir; a large body of land.

Senator SUTHERLAND. One single body of land?

Mr. DAVIS. Yes, sir; I think probably 100,000 acres; but I do not know as to that.

Senator SUTHERLAND. It is stated here 61,000 acres.

The CHAIRMAN. That is the withdrawal.

Mr. DAVIS. That is the withdrawal along the river.

Senator SUTHERLAND. That is what I am speaking about.

Mr. DAVIS. I supposed you meant the irrigable land.

Senator SUTHERLAND. No; the withdrawn lands. Are they in a single body?

Mr. DAVIS. It is a strip. Here is a map showing it; it is a strip along the river.

Senator SUTHERLAND. What is the width of the bluff?

Mr. DAVIS. Approximately a mile along each side of the river, as I recall it. Those are withdrawn. This is the case, at any rate, that where the land was surveyed we made the rule to make those broad withdrawals by sections only, not subdividing sections in the withdrawal, because where you do not accurately know the area desired, or the area that may ultimately be shown to be necessary, it entails such a large amount of clerical work and the necessity of making these descriptions of the northeast quarter of the southeast quarter, and all that, and then it does not mean anything.

Senator SUTHERLAND. Are there any power sites on that 61,000 acres of land?

Mr. DAVIS. I think so; yes, sir. The river has a big fall there, and there are power sites, in my sense of the word; yes, sir.

Senator SUTHERLAND. Well, power sites at which the water can be diverted from the river itself?

Mr. DAVIS. Probably there are some of that kind; yes, sir; but that is not the only means of developing power, you understand. You can develop power without diverting water from the river by building a high dam and getting a head in that way.

Senator SUTHERLAND. Getting at a higher point up the river?

Mr. DAVIS. No; you can build a dam right on the river and put your power plant right in the river and the head forms the dam. That is the main thing in developing power.

Senator SUTHERLAND. You spoke of pumping the water on the land for this irrigation project. Where do you get the power for that—the power for a pumping plant?

Mr. DAVIS. That withdrawal is supposed to provide it.

Senator SUTHERLAND. Do you take the water from the point higher up the river?

Mr. DAVIS. It might be developed in that way; yes, sir.

Senator SUTHERLAND. How do you intend to do it in this case?

Mr. DAVIS. That is a matter that has not been developed. There are two or three different ways of developing power, and it requires the examination of the river to decide which is the better way in any individual case. In any case the land would be needed.

Senator SUTHERLAND. Would you pump more water out of the river than you would divert from the plant?

Mr. DAVIS. That you might do so. That is the efficient head you can pump

a good quantity of water unless you pump it too high. It is a question of the multiplication of the quantity of water by the head.

Senator SUTHERLAND. Do you think you would in that case?

Mr. DAVIS. No, sir; I think it would probably need more water for power than for irrigation in that case.

Senator SUTHERLAND. So you would have to get the water from some other source?

Mr. DAVIS. But there is a big storage reservoir there where we expect to build a reservoir.

Senator SUTHERLAND. Would it not be a more economical use of water to use the water from the storage reservoir for agricultural purposes, instead of using it for generating water power from the river for agricultural purposes?

Mr. DAVIS. We expect to use water by gravity as far as it is feasible to do it, and projects are under way to do it; and in addition to that we can store more water; that is to say, we can use that for power in pumping on the higher lands and use the same water for irrigation down below in Arizona and California.

Mr. PEPPER. When you say there is a large reservoir higher up, do you mean the reservoir constructed or a withdrawal for reservoir purposes?

Mr. DAVIS. There are withdrawals for reservoir on what is called the Gore Canyon site.

Mr. PEPPER. In view of the question that has been asked, would it not be well to make a brief statement of each of the different ways in which water may be used in reclamation projects?

Mr. DAVIS. For the development of power, do you mean?

Mr. PEPPER. Yes, sir; in connection with power.

Mr. DAVIS. The development of power may be made in two general ways; one by diverting the water from the river and carrying it through tunnels, flumes, pipes, or canals on a much lighter grade than the river to some point where it can be dropped down a steep hill, so that, while the water is under pressure, it does not have to run any great distance. Then it can be dumped back into the river through water wheels and the power developed.

Mr. PEPPER. You make practically an artificial waterfall?

Mr. DAVIS. Yes, sir; you have to make an artificial waterfall; and the other method, and the only one that is feasible on a stream of small declivity, is to build a dam; then the water runs into the reservoir above from this dam, which fills it. That makes a difference between the water in the reservoir and below the reservoir, and by putting pipes or penstocks there at this dam the water can be run from water wheels, which can receive it from the water which is in the reservoir.

Mr. GRAHAM. That is the old milldam and mill-race proposition over again.

Mr. DAVIS. Yes, sir.

Senator ROOT. Is that like the power plant at Rock Island?

Mr. DAVIS. I have not seen that.

Mr. PEPPER. Then, when you have generated your power in either of the two ways that you have described, what use can you make of it as connected with the pumping proposition?

Mr. DAVIS. The water wheels can be harnessed to electric generators and power generated and transmitted long distances, if necessary.

to pump the water where you want to pump it, or it can be generated right at the point and pumping take place at the pond formed by the dam itself; or, one way that we have employed in the Reclamation Service, and expect to employ further, is by the direct pumping system, by which the water wheel and the pump are the same machine. The water is turned through a large pressure pipe and let into a machine where it is separated, one part going through the water wheel which runs the machine and turns a centrifugal pump at the upper end of the same shaft, and the other part fed into that centrifugal pump under the same force. Of course there is a head which helps that, and is elevated to an elevation greater than the elevation of the water. We have that in operation in the Reclamation Service.

Mr. PEPPER. Well, Mr. Davis, I notice—again recurring to page 86—that your original withdrawal in this case of Grand River was about 61,000 acres and that somewhere toward the end of July—July 30 I think it was—the Secretary of the Interior withdrew some 28,000 acres or we withdrew some 28,000 acres where your whole withdrawal had in the interval been restored. What have you to say about the difference in area between the original withdrawal and the rewithdrawal?

Mr. DAVIS. All I know about that is what the map shows; it is a narrow strip that they have withdrawn along the river, their theory being that it did not require for the conservation of water power as wide a strip as was withdrawn by the Reclamation Service.

Mr. PEPPER. What does your experience lead you to conclude as between the view represented by the original withdrawal and the view which is reflected in the subsequent withdrawal?

Mr. DAVIS. My view is represented by the original withdrawal, else I would not have recommended it, but I have no criticism to make of the withdrawal made by the Geological Survey, which, in my judgment, is not as wide as the one which was originally made; but men may honestly differ on that point.

Mr. PEPPER. And are you able to say—and of course if you are not you will tell me so—are you able to say whether the rewithdrawal was made upon the basis of data already existing in the government departments, or on the basis of a new field examination?

Mr. DAVIS. I am not able to say about that.

Mr. PEPPER. Now, then, Mr. Davis, you have spoken about the Grand River, Utah. Does your book contain a map showing the Yellowstone and tributaries withdrawal in Montana?

Mr. DAVIS. It does.

Mr. PEPPER. Speaking generally is what you have stated about the last two cases applicable also to that?

Mr. DAVIS. Yes, sir; yes, it is. The conditions are slightly different, but the general condition is the same.

Mr. PEPPER. Now there appears to be an enormous discrepancy between the original withdrawal and the amount of the two subsequent withdrawals, is there anything to be said about that at this point?

Mr. DAVIS. Yes. I do not know the entire cause, but I presume I know the partial cause, and probably the main cause, and that is a well-known fact, that most of that land has been entered, the exact areas of private and public lands were not inquired into in the original withdrawal as being a matter of some expense and involving possible error and being entirely immaterial because the withdrawal would

have no effect on the private land, consequently we did not regard that as worth while in the preliminary withdrawal to make that determination.

Mr. PEPPER. Well, in addition to the element of private land is this another cause in which there is the element of a narrower withdrawal in terms of a strip along a river?

Mr. DAVIS. That is an inference, Mr. Chairman, I do not know whether you want me to draw inferences or not, I can not positively state the object.

The CHAIRMAN. That has been the style here so that you can pursue it.

Mr. DAVIS. I think it is a fair inference that the policy pursued on the Grand River would also apply to the Yellowstone. That they doubtless, in making the rewithdrawals, confined their withdrawals to a narrower strip along the river than originally, which confines them to the portion which is in private hands to a large extent.

Senator FLETCHER. Do you know, Mr. Davis, of any private entries being made in any of those areas between the date of the restoration and the date of the withdrawal?

Mr. DAVIS. I have no information on that part.

Senator FLETCHER. There is danger of that sort of thing?

Mr. DAVIS. There was danger, while they were open, of course. There were a great many applications, or at least a great many complaints about these withdrawals. I suppose I ought not to say a great many—but there were a number of complaints, however, and it hardly seems probable that there would not be some applications when the land was thrown open.

Senator FLETCHER. Is it not safer and better for the protection of the government interests, to use Mr. Pepper's expression, to pare down the original withdrawals rather than to restore the whole withdrawal, and then some two or three weeks afterwards rewithdraw what is wanted?

Mr. DAVIS. Yes, sir; that is the policy we have followed, and for that reason—that it is safer for the public interest.

Mr. PEPPER. Now, Mr. Davis, I do not want you to neglect to comment upon any one of these maps that you think should be specially commented upon; but, on the other hand, I do not want to take the time of the committee to go over each one of them unless there is something that would lead you to modify the general statements that you have made as applicable to all of them.

Mr. DAVIS. There is only one of them that seems to me that has anything of value to be said about, that is materially different from any of the others, and that is one on the Colorado River, made under the provisions of the reclamation act on February 16, and I can speak of that in an entirely unbiased way, because I did not make it; it was made during my absence in Panama, and it is on the Colorado River. The purpose, as I see it—and what actuated Mr. Newell, of course, I do not know—but the purpose, as I see it, is partly to protect the acquisition of rights that would be detrimental to the interest of the government projects above and below on the same stream. It at the same time conserves the power rights and puts them under the control of the United States.

Senator SUTHERLAND. You are speaking now of the 222,000-acre withdrawal?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Where is that land situated?

Mr. DAVIS. On the Colorado River, below the junction of the Green and the Grand.

Senator SUTHERLAND. That would extend as far as the Arizona line?

Mr. DAVIS. Probably it does; I can find a map of it for you here. Yes, sir; it extends down to the Arizona line. This strip from here to here [indicating on the map].

Senator SUTHERLAND. That is in——

Mr. DAVIS. In a canyon.

Senator SUTHERLAND. That is in a wild and uninhabited country?

Mr. DAVIS. Yes, sir; in the main. There are some few settlements along it, but not many.

Senator SUTHERLAND. Are there any settlements along the river on that tract there?

Mr. DAVIS. I am not positive there is any along there. There is one at Lees Ferry, but I am not sure whether it is in Utah or Arizona; it is near the line; but not any large settlement. The development of power here would require long-distance transmission. I suppose that is your point?

Senator SUTHERLAND. Yes. It would require a transmission of some hundreds of miles, would it not?

Mr. DAVIS. Well, I do not know; there might be mines very much closer than that. The greatest market for power in the West is the mining industry, and it may be found any time, anywhere.

Senator SUTHERLAND. Do you know of any mining camps in that section nearer than Colorado?

Mr. DAVIS. I do not know positively of any; I have heard of mining camps in the San Juan region; there may be some along there; I do not know. That is not so very far from this country.

Senator SUTHERLAND. There is nothing in sight, anyhow, that you know of, for the use of that power?

Mr. DAVIS. Not that I know of.

Senator SUTHERLAND. It is altogether speculative and very long range speculation, isn't it?

Mr. DAVIS. I hardly know exactly what you mean by speculative. I think that power will be used some day, somehow.

Senator SUTHERLAND. You do not know of any point now at which it could be used?

Mr. DAVIS. No, sir; not in any large quantity; but I might say that is true of a great many other sites.

Senator SUTHERLAND. I want to ask you before we leave that with reference to the Yellowstone and its tributaries in Montana. I noticed the area withdrawn originally was 435,840; the total area withdrawn on the recommendation of the Geological Survey was only 3,747 acres, an enormous discrepancy.

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Did I understand you to say that might be accounted for in some degree by the fact that large portions of it were in private ownership?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Well, in the next column, under the head of entered land, the number of acres given is 1,442 acres.

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Does that indicate the number of acres in private ownership?

Mr. DAVIS. No, sir; that is open entries.

Senator SUTHERLAND. Open entries?

Mr. DAVIS. Yes, sir; entries that have not been obtained; that is my understanding.

Senator SUTHERLAND. You think a very large portion of the 435,000 acres was in private ownership?

Mr. DAVIS. Well, a considerable portion of it, doubtless; and also considering the narrow strip just as they did in the case of the Grand River and the Colorado, leaving out the edges.

Senator SUTHERLAND. The difference between nearly half a million acres and 3,747 acres would make a very much narrower strip.

Mr. DAVIS. Well, I did not say that was the only reason; but, the two combined, the narrow strip that they have selected, is nearly all private land, and the part they left out on the edges may be nearly all public land for all I know; I presume a large majority of it is.

Mr. PEPPER. Is that a correct statement to make—that is, that this difference in area between the withdrawal and the rewithdrawal would result, so far as you know, from two causes; in the first place, because the entered land was actually credited in the acreage of original withdrawal, but has been specifically excluded from the rewithdrawal; second, that, speaking generally, the policy of rewithdrawal has been to withdraw a narrow strip of perhaps a quarter of a mile, or thereabouts, along the river, as distinguished from a strip of about a mile—I want to know if that is approximately a correct statement?

Mr. DAVIS. That is a correct statement, I guess. There is a little crudeness about the first part of it. The area given here as withdrawn, according to my understanding, does include all the private land within the areas that went in under the list. That land, however, was not withdrawn, and it is not correct to say it was. By excluding that, that area is reduced. The other cause is the consideration of a narrower strip along the stream as being sufficient to conserve the power rights.

Mr. GRAHAM. Just one question there, Mr. Davis. When this list gives 435,840 acres as the approximate area of the amount withdrawn, that includes what was then under settlement within that general outline?

Mr. DAVIS. Yes, sir.

Mr. GRAHAM. And, as I understand you, at that time there might have been only perhaps 10,000 acres that was really subject to withdrawal, and the order withdrawing them was made with the understanding that the order applied only to such lands as were susceptible of withdrawal.

Mr. DAVIS. That is true; but the area of public land was probably much larger than 10,000 acres.

Mr. GRAHAM. I mentioned that merely as an illustration. As a matter of fact, it may have been a relatively small amount and not nearly 435,000 acres.

Mr. DAVIS. Oh, yes, sir; that is undoubtedly true.

Mr. PEPPER. In connection with Mr. Graham's question, it is also true, is it not, as you have explained, the drawing of a narrow strip along the river includes a larger percentage of entered land than the drawing of a wider strip?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. That is to say, the nearer the river the more entered is the land?

Mr. DAVIS. As a rule, in this valley, at least.

Mr. GRAHAM. My reason for asking the question is this, as the chairman says, you may draw inferences; I would like to have yours. Does the mention of 435,000 acres as being withdrawn indicate carelessness on the part of those who did the withdrawing, as tending to show they withdrew a lot of land without knowing what the local conditions were—is that the inference to be drawn from this large amount included in this withdrawal?

Mr. DAVIS. I think so.

Mr. GRAHAM. That it was either the carelessness or the incompetency on the part of those who withdrew it?

Mr. DAVIS. I think so. It is a matter of opinion whether the average man would so infer, but I think he would.

Mr. GRAHAM. But what would the just inference to draw from it be?

Mr. DAVIS. The just inference would be that it was an error in statement and not that that area was withdrawn.

Mr. PEPPER. What is the fact, then, Mr. Davis, as I understand it, and I direct your attention particularly to the column of figures headed "Approximate area," what is the fact—are those areas there given approximately the areas affected by the original withdrawals?

Mr. DAVIS. No, sir.

Mr. PEPPER. Now, you have commented, I think, upon the only map that you particularly wish to comment upon?

Mr. DAVIS. I think so, unless the committee want something else.

Mr. GRAHAM. May I straighten myself out a little further on that point, Mr. Pepper. It is stated with tolerable accuracy, then, that item would be the withdrawals of so much of the public lands as is susceptible of withdrawal within the limits of the territory included in the 435,000 acres?

Mr. DAVIS. Yes, sir. You do not need to say that is susceptible of withdrawal, because only public land is susceptible of withdrawal.

Mr. GRAHAM. To those who do not know that my language would be more accurate.

Mr. DAVIS. Yes, sir; that would convey a better idea, it is true.

Mr. PEPPER. Then, without commenting further upon the specific maps, will you, Mr. Davis, be good enough to leave that book of maps for the inspection and examination of the committee and counsel so that it can be used hereafter?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Mr. Davis, before you finally leave this subject of withdrawals, I want to ask you a question or two about the Green River of Utah withdrawal. That original withdrawal was 298,240 acres?

Mr. DAVIS. The Green River, Utah?

Senator SUTHERLAND. Yes, sir; the Green River, Utah. I wish you would tell me where the land is situated, and between what points?

Mr. DAVIS. That is on both sides of the Green River—that is, between the mouth of the river going northward along the river to a little above Jensen, while it goes up to the Wyoming line.

Senator SUTHERLAND. That is, it begins at the junction of the Green and the Grand and extends up to the Wyoming line?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. A distance of approximately how far—200 or 300 miles?

Mr. DAVIS. Yes, sir; I suppose a couple of hundred miles.

Senator SUTHERLAND. Now a portion of that land is agricultural land, is it not?

Mr. DAVIS. I presume so. It is valley land.

Senator SUTHERLAND. Down in the neighborhood of Green River, Utah?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. There is quite a large body of agricultural land?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. That was included in the withdrawal?

Mr. DAVIS. Well, that agricultural land around the Green River—you mean where the Rio Grande Western crosses the river?

Senator SUTHERLAND. Yes.

Mr. DAVIS. It is mainly in private ownership, and would not be affected.

Senator SUTHERLAND. There was considerable of it not in private ownership.

Mr. DAVIS. Maybe so.

Senator SUTHERLAND. Now, to refresh your memory, you recall when the delegation came down here from there to protest?

Mr. DAVIS. Very well; I recall it.

Senator SUTHERLAND. To protest against the withdrawal?

Mr. DAVIS. I think that was some distance below.

Senator SUTHERLAND. They were farmers, weren't they, or representing them?

Mr. DAVIS. I did not see them.

Senator SUTHERLAND. Did they not appear before the Reclamation Service?

Mr. DAVIS. Possibly, but I did not see them. They might have done so, you know. I was absent when the new administration came in; I was in Porto Rico.

Senator SUTHERLAND. You do not recall whether a delegation of farmers, settlers there, came in and protested?

Mr. DAVIS. No; I did not see them. I remember a document that came to my attention after I came back. They might have been there, but I did not see them.

Senator SUTHERLAND. From your knowledge of the history of the office there, do you not know that a delegation of settlers were here protesting against the withdrawal of these lands?

Mr. DAVIS. No; my first impression of that kind I got from you just now, but I do know about the document which was there protesting against it.

Senator SUTHERLAND. You do not know, for example, that the mayor, if that was his title, that the mayor of Green River City came down in behalf of a number of settlers?

Mr. DAVIS. No; I did not know that.

Senator SUTHERLAND. Not people claiming power sites, but people actually settled upon the land and desiring to cultivate it?

Mr. DAVIS. No, sir.

Senator SUTHERLAND. Can you produce that document?

Mr. DAVIS. I suppose so; I guess it is in our files; it might possibly have been returned to the Secretary's office.

Senator SUTHERLAND. If you have it in your files, will you bring it in?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Mr. Davis, look again at the table on page 86. It is a fact, is it not, that when the withdrawals about which you have just been questioned were made the subject of two successive restorations, one on March 20, and one on or about April 15?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. And is it not a fact that so far as the restoration of March 20 is concerned, that that was made in response to an actual recommendation of the Reclamation Service?

Mr. DAVIS. I so understand it; yes, sir.

Mr. PEPPER. That is to say that is not one of the restorations which was initiated by the present administration?

Mr. DAVIS. That is my understanding.

Mr. PEPPER. You speak with reserve because that happened while you were away?

Mr. DAVIS. The initiation of the restoration happened while I was away.

Mr. PEPPER. And you will produce what Senator Sutherland asks for?

Mr. DAVIS. Yes, sir, I will.

Mr. PEPPER. Now, Mr. Davis, what was the status of this work of power-site protection, both in connection with the reclamation possibilities and in connection with general power possibilities, on March 4, 1909?

Mr. DAVIS. The process of preparing lists for withdrawals to conserve the power sites was incomplete; it was then in progress.

Mr. PEPPER. Had the process of paring down the large withdrawals been going on?

Mr. DAVIS. Two or three of them had been reconsidered and some paring down had been made on the basis of closer office investigation under the action of Mr. Newell, but I am not sufficiently familiar with that to testify about it.

Mr. PEPPER. Was it or was it not then in contemplation that field examination would be made in connection with this paring down process?

Mr. DAVIS. It was in contemplation; yes, sir.

Mr. PEPPER. And what was the position of the United States with regard to the protection of these power sites. Was the strategic position good both as respects the reclamation possibilities and the general water-site possibilities?

Mr. DAVIS. It was good so far as withdrawals had been made, but not for the ones where the withdrawals have not been made.

Mr. PEPPER. Then there was necessity for further withdrawals?

Mr. DAVIS. Oh, yes.

Mr. PEPPER. You did not regard, then, the only work to be done as the paring down of withdrawals already made, but regard it as important that the work of further withdrawals should proceed?

Mr. DAVIS. Yes, sir; that was my idea.

Mr. PEPPER. Now, where were you in the beginning of March, 1909?

Mr. DAVIS. In February, 1909, I went to Porto Rico, in accordance with the statute of the Territory of Porto Rico requiring that the irrigation system, which they were planning, should be passed upon by the engineers of the Reclamation Service. Mr. D. C. Henny and I sailed from New York, I think it was the 20th of February. And I reached Washington on the return trip on the morning of the 17th of March, I think it was, either the 16th or the 17th—at any rate on the morning of the 17th I appeared in the office.

Mr. PEPPER. And did you, on the 17th of March, have an interview with Mr. Ballinger?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Under what circumstances did that take place?

Mr. DAVIS. Secretary Ballinger telephoned me shortly after noon on the 17th of March, asking me to meet him at his hotel that evening at 7.30 o'clock, which I did.

Mr. PEPPER. Was Mr. Newell present at the interview?

Mr. DAVIS. He was not. No one was present except Mr. Ballinger and myself.

Mr. PEPPER. Will you state whether or not at that conversation the question of the power-site withdrawals came up for discussion; and if so, how?

Mr. DAVIS. It did. The Secretary opened the conversation by saying he wanted to ask me some questions about the Reclamation Service, and proceeded to do so. He made a number of criticisms on the past conduct of the service. Among others was the fact that there had been large areas of land withdrawn for conservation of power sites which he said was illegal, and he cited a number of other things that had been practiced in the Reclamation Service which he also said were illegal.

Senator FLINT. Mr. Pepper, would it interrupt you or the witness to have him fully state, not limiting it to the power sites, but all the objections that the Secretary made to what had taken place in the Reclamation Service?

Mr. PEPPER. Certainly not. Mr. Davis, will you give the conversation, as nearly as you can recollect it, and if Mr. Ballinger made some general expressions as to his favorable attitude toward conservation, bring that out, too.

Mr. DAVIS. It has been a year now, about, and I can not make a very accurate account of the conversation, but I can tell in general the trend of it. The Secretary, as I remember it, had no commendation whatever to make of the Reclamation Service, but he criticised it on many points. One was the withdrawal for power sites; one was the fact that many settlers were on lands, who, he thought, had been promised water and had been waiting and living on promises for some time and had been misled; one was that part of our work which was going on under what we call "force accounts"—that is, the direct employment of labor—which he said was illegal and could not be done; and it should all be done by contract. Another was what he called our "publicity bureau"—that is, work, which I explained to him that evening, consisted of the dissemination of information concerning the projects, mainly to inquiring settlers, and also to the preparation of the action of the department and the current news of the service in the form of typewritten bulletins, which were hung on a hook in the office for the convenience of newspaper

correspondents who might come in desiring news. I explained that that was done for the accommodation of the newspaper men and to save the time of the men who would have to talk to them, and eliminate inaccuracies which might occur in transcribing conversations instead of having them drawn in the proper way.

There is one other point that he criticised, and that was the alleged oppression of contractors. He said he had heard a great deal of complaint about the treatment of the contractors by the Reclamation Service; and in reply to that I told him that if there was anyone at fault in that it was myself, because our contracts left decisions concerning contractors to the chief engineer, and that I had made every effort I knew how to put forth to do justice to contractors by giving them full hearings and investigating as fully as possibly, both personally and by testimony, all the claims that they put forth. I might later think of some other points, but that constitutes, as I remember it now, the bulk of the criticisms which he made—oh, yes, he criticised our having taken up too much work. Each one of those I answered in such a way as I thought proper and just, and we talked for about two hours.

Mr. PEPPER. Did he seem to show a detailed familiarity with the work of the service?

Mr. DAVIS. No, sir. In most cases where he criticized he listened with attention to what I had to say on the subject, and seemed to be interested, and I think in nearly every case he stated that it looked much better to him; that he had not known very much about it, and he made a broad statement to that effect at the end of the evening—that he knew very little about the service, and he wanted assistance in getting acquainted with it, and that he wanted me to assist him in getting acquainted with it, which I promised to do.

Mr. PEPPER. And did you know at the time whether or not he had previously taken the matter up with the director?

Mr. DAVIS. No, sir; I didn't. I had very little conversation with Mr. Newell, or anyone else that day, regarding the new administration, but I had asked Mr. Newell how they were coming along with the new Secretary, and he passed it off with the casual remark, "pretty well," or something like that. He said very little about it, so that I had no accurate idea of the relations at all until that evening when I got a very much better idea because the Secretary expressed a lack of confidence in Mr. Newell's ability. That was no surprise to me, because there had been a great deal of newspaper talk on that subject; in fact, while I was in Porto Rico I saw a newspaper clipping that was sent down there, dated in February, which announced that the Secretary of the Interior was going to make changes in the Reclamation Service, among which was the removal of the director.

Mr. PEPPER. Well, in addition to the criticisms of the Reclamation Service which you have enumerated, did Mr. Ballinger take up specifically the matter of the power-site withdrawals?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Did he express himself in a general way as favorable to the idea of conserving the power sites?

Mr. DAVIS. He said that these withdrawals were all illegal; that they were in violation of the public-land laws, and that while he was in favor of conserving the power sites it could not be done without

legislation. So far as I can recall, that is all that was said on the subject of what his sentiments were regarding the matter.

Mr. PEPPER. Did he give any orders?

Mr. DAVIS. Oh, yes. He spoke as if it was a tremendously important matter; as though a great crime had been committed in making the withdrawals. That is the impression he made on me. He did not use that word, but he said it was a violation of the law, which I suppose is another name for the same thing. I said that I did not think it was such a serious matter, because they could readily be restored if it was illegal, and no great harm could be done, and so far as the violation of the law is concerned, because it did not last very long, and he asked me, then, in detail—specifically, I mean, not in detail—but he asked me specifically whether I could segregate in our records the withdrawals that had been made for the conservation of power, and I told him I could very readily, and he directed that that be done. He said that he did not care to have it done suddenly, but I got the impression that he wanted it done gradually. I think he said so. I did not, however, attach any particular importance to that feature of it. However, that did take hold of my mind as being what would be fitting with the possibilities of the case, because there is a lot of clerical work in making these lists, and it would not have been convenient to send them all in quickly because of the work.

Mr. PEPPER. Did he not specifically say that it was to be done, but that it was to be done slowly, so as not to attract public attention?

Mr. DAVIS. That is my recollection. I made a note of that afterwards, and that is my recollection of the conversation, and I made a note in his presence that evening of three specific things he wanted done. One was to send in the list of power withdrawals for restoration.

Mr. PEPPER. Was anything said by him at that interview, or at any time at all after the last restoration was in fact made, to the effect that the areas covered by the withdrawals were too wide?

Mr. DAVIS. There was nothing said that evening on that subject. The subject was mentioned in subsequent conversations? That evening, on the 17th of March, at the close of the conversation, I asked the Secretary if I should regard that conversation as confidential, and he said no, to talk over these matters with Mr. Newell, if I chose, and I did so, with the exception of his reference to Mr. Newell personally.

Mr. PEPPER. Was anything said in that interview respecting the failure of some withdrawals that had been made to touch the streams at certain points?

Mr. DAVIS. Oh, no. I was about to say that the next day—

Mr. PEPPER. Before going to the next day, there was one question about that interview that I should like to ask. Was anything said at that time respecting the making of a further examination, with a view to rewithdrawal?

Mr. DAVIS. I believe that I told him that that had been the scheme; I certainly did the next day; whether I did that evening or not I do not remember, but I think I did. I gave him in a general way what had been the scheme, and it must have included that, although I can not positively say with regard to that.

Mr. PEPPER. Did he express any intention to carry out that scheme or to make rewithdrawals?

Mr. DAVIS. No.

Mr. PEPPER. What was his statement with reference to the rewithdrawal matter?

Mr. DAVIS. That they were entirely illegal and could not be sustained in any court.

Are you ready for me to go to the next day now?

Mr. PEPPER. Yes.

Mr. DAVIS. He also told me to make an appointment with Mr. Newell to be at his office the next day at a certain hour. I believe he mentioned an hour; at any rate, we were there at that time.

Mr. PEPPER. That was on March 18?

Mr. DAVIS. March 18. And this subject was again taken up, in which he again said that the withdrawals were illegal, and I said but little in that conversation; Mr. Newell and the Secretary did most of the talking. Mr. Newell defended the withdrawals, stated the purpose of the plan regarding the paring-down process, and in the conversation he spoke of some withdrawals being made under the Secretary's supervisory power, and Secretary Ballinger added to his statement, which he does not have—that is, the Secretary does not have any supervisory power, was his statement. And he reiterated his statement that it was illegal and it was immaterial what could or might be done, or what had been the plan regarding paring down, because it was all in violation of law, and must be restored; and directed that we proceed with that.

Mr. PEPPER. Did he repeat the order to recommend these restorations?

Mr. DAVIS. Oh, yes.

Mr. PEPPER. And did Mr. Newell—

Mr. DAVIS. To be exactly correct, I can not say that he used the word "recommend," but he instructed us to prepare these withdrawals for restoration. I do not remember—

Mr. PEPPER. And submit them to him?

Mr. DAVIS. Well, that was the only way to do it.

Mr. PEPPER. Did Mr. Newell make any protest in your hearing?

Mr. DAVIS. Yes. He protested vigorously at that and subsequent times.

Mr. PEPPER. Did Mr. Newell call the Secretary's attention to the fact that the order then given was a reversal of the previous policy? I do not mean in those words, but in substance.

Mr. DAVIS. In substance; oh, yes; that was well recognized. There was no argument on that point.

Mr. PEPPER. Was anything said at that interview respecting the purpose of rewithdrawal?

Mr. DAVIS. Nothing.

Mr. PEPPER. Did the question come up at that interview respecting the removal of your office; that is, the place where you had your office or desk?

Mr. DAVIS. That is a matter that I omitted in the conversation of the previous evening. At the Shoreham Hotel on the evening of the 17th he said that he wanted me to come down and take a desk in his office, in the next room to his, or in that vicinity, in order that we might get in closer touch regarding these matters and that he

could talk over with me any reclamation matters that might come up, and he spoke of one of the reasons being that he was frequently called upon by prominent people in regard to reclamation matters that he was not familiar with, and he wanted some one there who was familiar with them. He asked if it were practicable to do that, and I told him it was, and he said he would make out a written order to that effect the next day, and in this interview that I speak of, on the 18th, he presented such a written order and Mr. Newell made some protest on that point—that I could not be as useful there as at our own office, because of being separated from the files where the information very largely was, and that either he or I could come down at a few minutes' notice by telephone and bring any information he might want. The Secretary, however, did not change his plans. He delivered to me a letter instructing me to come down to the department, take a room near his, or take a room in the department, and we also made arrangements about a stenographer and desk room, etc.

Mr. PEPPER. At that interview of March 18 between yourself and Mr. Ballinger and Mr. Newell, when Mr. Ballinger had directed the submission of lists for restoration, did Mr. Newell ask Mr. Ballinger to put his instructions in writing?

Mr. DAVIS. He did, and I understood the Secretary to say that he would; he certainly gave me that impression, and I understood it to be Mr. Newell's impression also, that he would give those instructions in writing.

Mr. PEPPER. Subsequent to that date, between, we will say, March 19 and March 30, were there from time to time confirmations of the order to restore?

Mr. DAVIS. Yes, sir. Every time we talked about the subject that was the conclusion. I should say—I forgot to say—that when at various times in connection with this matter, Secretary Ballinger having stated that the withdrawals were illegal, I expressed opinion that if that was the case there was nothing to do but restore them. I repeated that a number of times.

Mr. PEPPER. You did not discuss with him, I suppose, the question of legality or illegality?

Mr. DAVIS. Not at all. In the interview in the hotel he spoke of the illegality of the acts of the Reclamation Service being very frequent, and I explained that the legality of anything done was always passed upon by the department; that our office never passed on a legal question; we sometimes submitted argument or brief, but so far as the violation of or conformations to law were concerned, Mr. Newell and his subordinates had no responsibility in that matter, excepting those of assisting, of course, in guiding the department where possible, but the department had always assumed to pass upon and determine the legal aspects of everything.

Mr. PEPPER. And did you, in pursuance of that general policy, write to him on or about March 29, inclosing a brief by Mr. Bien in favor of the legality of what had been done?

Mr. DAVIS. I do not remember about that.

Mr. PEPPER. Will you look at the file that I hand you and see whether or not that letter of the date mentioned, purporting to be signed by you, is a copy of such a letter as I refer to.

Mr. DAVIS. I have no reason to doubt it; but I can not testify that it is. I have no doubt it is.

Mr. PEPPER. Well, it purports to have your signature.

Mr. DAVIS. Yes, sir.

Mr. PEPPER. You are the A. P. Davis referred to?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Acting director?

Mr. DAVIS. Yes, sir; it is a typewritten signature, however.

Mr. PEPPER. But this is the file that has come up here from the department on call, Mr. Chairman.

Mr. DAVIS. Well, that is a reply of the department.

The CHAIRMAN. Do you want to introduce it?

Mr. PEPPER. I offer that letter of March 29, 1909, from A. P. Davis, acting director, to the Secretary of the Interior, covering a memorandum or brief by Mr. Bien.

The CHAIRMAN. Is there any objection to that, Mr. Vertrees?

Mr. VERTREES. None at all.

The CHAIRMAN. It is admitted.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
March 29, 1909.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I submit herewith a memorandum upon the matter of the Secretary's supervisory authority, prepared in this office.

I think the last paragraph of this memorandum summarizes the matter fully and shows that the authority of the Secretary depends upon his views of the action required by the interests of the public service. The paragraph in question is expressed practically in the language used by the Supreme Court in its decisions upon this subject, and is as follows:

The one question which the Secretary of the Interior has to decide in every such case is whether the reservation to be made is required by "the exigencies of the public service" and whether it is within his powers, as expressed by the Supreme Court, to prescribe the rules necessary "for the purpose of justice and to prevent the consequences of inadvertence, irregularity, mistake, and fraud" and "to do justice to all claimants and preserve the rights of the people of the United States."

Very respectfully,

A. P. DAVIS, *Acting Director.*

[Memorandum.]

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
March 27, 1909.

AUTHORITY OF THE EXECUTIVE TO RESERVE PUBLIC LANDS.

Secretary Lamar in connection with the Puyallup Indian Reservation held (10 L. D., 518) under the authority of *Wolcott v. Des Moines Co.* (5 Wall., 681) and *Grisar v. McDowell* (6 Wall., 363) found that the President by executive order can reserve a part of the public domain for a specific public purpose and referred to the following language of the Supreme Court in the decisions mentioned:

"From an early period in the history of the Government it has been the practice of the President to order, from time to time, as the exigencies of the public service required, parcels of land belonging to the United States to be reserved from sale and set apart for public use."

The same principle was enunciated in *Homestead Company v. Valley R. R.* (17 Wall., 153) and in *U. S. v. Leathers* (6 Sawyer, 20). In some cases the reservations were for military purposes, but establishing a reservation for Indians is equally a *public purpose*.

Mr. PEPPER. What action did he take?

Mr. DAVIS. I submitted it to him personally. He did not sign the letter, but made changes in it, amounting to the redraft of a portion of it.

Mr. PEPPER. To what effect?

Mr. DAVIS. He changed the wording some of the paragraph referring to the Attorney-General. I did not see that it made any material change in the meaning, nor did I know, nor do I know yet, the purposes of the changes. It was simply his taste as against mine.

Mr. GRAHAM. Was the letter which you have just read the letter which you wrote or as the Secretary had changed it?

Mr. DAVIS. No; as I wrote it.

Mr. PEPPER. In point of fact do you know whether the matter was referred to the Attorney-General?

Mr. DAVIS. I do not know.

Mr. PEPPER. I had thought, Mr. Chairman, that our call was broad enough to cover the letter from Senator Heyburn to the Secretary of the Interior and the reply, but I notice that those two letters are not upon the file sent up, so if you will permit me I will renew the call for those letters.

The CHAIRMAN. Will you leave a memorandum with Mr. Sleman?

Mr. PEPPER. Yes, I will do that. That had relation to the Salmon River withdrawals, did it not?

Mr. DAVIS. The letter states—

Mr. PEPPER. But you recall it?

Mr. DAVIS. I believe so.

The CHAIRMAN. The Salmon River in Idaho?

Mr. PEPPER. Yes. Will you look at Senate Document—

Mr. VERTREES. Mr. Pepper, I can furnish you with copies of those letters.

Mr. PEPPER. If you will do so I will be very much obliged to you.

Mr. VERTREES. Yes [handing papers to Mr. Pepper].

Mr. PEPPER. Thank you. If you have them here I would rather have them just at this point.

The CHAIRMAN. You had better put them in right after the other letter.

Mr. PEPPER. I will do so, sir [reading]:

[Copy.]

[Inquiry concerning withdrawal of lands in Salmon River country, Idaho.]

UNITED STATES SENATE,
Washington, D. C., March 19, 1909.

Hon. RICHARD BALLINGER,
Secretary of Interior, Washington, D. C.

DEAR MR. SECRETARY: Strong complaint comes from Idaho to me, of the withdrawal on February 17, 1909, from all forms of entry, about 175,000 acres of the public lands in Idaho, surveyed and unsurveyed.

This land is situated in that portion of the Salmon River country not now included in the forest reserves. The larger portion of the lands withdrawn is in the Lewiston land district, in Idaho. The paper states that these lands were withdrawn in the exercise of the supervisory authority of the Secretary, and with a view of conservation of water resources, etc. I know of no law under which such withdrawals are authorized. I would like very much to have a reference to the express authority under which the withdrawals are made.

Sincerely, yours,
EWE/H.

(Signed) W. B. HEYBURN.

That is the letter which, having been referred to you, led you to draft the reply which you have produced?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. That is admitted in evidence.

Mr. PEPPER. The second letter is dated March 20, 1909.

[Copy.]

DEPARTMENT OF THE INTERIOR,
Washington, March 20, 1909.

[Address only the Secretary of the Interior.]

MY DEAR SENATOR: I am in receipt of your letter of March 19, respecting the withdrawal of certain public lands in Idaho, in the Salmon River country, and note what you say respecting the action of my predecessor regarding the same.

I hope to be able in a short time to dispose of this question, in conjunction with the Attorney-General, and will thereupon advise you respecting the result thereof.

Very truly, yours,

R. A. BALLINGER, *Secretary*.

Hon. W. B. HEYBURN,
United States Senate.

That last is the form of letter, to your best recollection, that finally went?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. That is admitted in evidence.

Mr. PEPPER. So far as you know, was the matter submitted to the Attorney-General?

Mr. DAVIS. I do not know. I never heard that it was, but it might have been.

Mr. PEPPER. Will you turn to Senate document, page 556, and tell me whether on March 30, the date following your letter inclosing Mr. Bien's brief, the Salmon River restoration was made?

Mr. DAVIS. That seems to be a list of lands along the Salmon River, submitted on March 30 and approved the same date.

Mr. PEPPER. What is the form of restoration that is here used? I see it has your signature. Where did you get the form?

Mr. DAVIS. That is an adaptation of the regular form, of which we have printed forms in our office, on which restorations are made. We have a large number of them and they employ a printed blank.

Mr. PEPPER. I hand you, from the papers produced, a document which purports to be such a form. Is that the form that you refer to?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. That is the form actually used in this case?

Mr. DAVIS. No; this case referred to the supervisory authority, and there is a slight modification of this form, but otherwise it is the same.

Mr. PEPPER. I will just read this, as it is a general form. This form reads thus:

FILE No. 2-115.—*Water-power sites—Restorations.*

MARCH 30, 1909.

THE SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with power sites, the withdrawal of the following-described lands, withdrawn under the supervisory power of the Secretary February 17, 1909, no longer appears necessary to the interests of the United States

Mr. PEPPER. What action did he take?

Mr. DAVIS. I submitted it to him personally. He did not sign the letter, but made changes in it, amounting to the redraft of a portion of it.

Mr. PEPPER. To what effect?

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MARCH 30, 1909.

THE SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with power sites, the withdrawal of the following-described lands, withdrawn under the supervisory power of the Secretary February 17, 1909, no longer appears necessary to the interests of the United States

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Then follows the description, and it is signed "Very respectfully, A. P. Davis, Acting Director." Below: "Approved March 30 and referred to the General Land Office for action as recommended. R. A. Ballinger, Secretary."

Mr. Davis, had there been any recent examination of the land to which that restoration order referred?

Mr. DAVIS. There had not.

Mr. PEPPER. Was it true that the withdrawal was no longer necessary, or no longer appeared to be necessary, to the interests of the United States?

Mr. DAVIS. That is a matter of opinion.

Mr. PEPPER. Was that your opinion?

Mr. DAVIS. No; it was not.

Mr. PEPPER. Under what direction or authority, if any, was that so-called recommendation made by you?

Mr. DAVIS. It was under the direction of the Secretary, given to me on the 17th of March, and at numerous subsequent dates to sending these lists. We simply had the convenient blanks that we had to do it on, which we always used.

Mr. PEPPER. Did you understand this to be initiating a recommendation to make this restoration?

Mr. DAVIS. No; I did not initiate it.

Mr. PEPPER. Did you understand this to be carrying out a mandatory order?

Mr. DAVIS. I did.

Mr. JAMES. Is this withdrawal or restoration here of Salmon River, Idaho, that about which Senator Heyburn had written?

Mr. DAVIS. Yes, sir.

Mr. JAMES. What is the date of that letter?

Mr. DAVIS. I do not remember.

Mr. PEPPER. March 19. Senator Heyburn's letter was dated March 19.

Mr. GRAHAM. Would it have been in order for you to change the verbiage in the introductory part of that letter?

Mr. DAVIS. Yes, sir.

Mr. GRAHAM. And, for instance, to say the Secretary directs that so and so be done, so that it would not appear as your personal order?

Mr. DAVIS. Yes; it would have been in order to do so, I suppose; and I think it would have been better if I had.

Mr. JAMES. If it had been left to you alone, without any direction from the Secretary, you would not have restored these lands?

Mr. DAVIS. No, sir; I would not have withdrawn them in the first place, either.

The CHAIRMAN. You would not have withdrawn them in the first place?

Mr. DAVIS. No, sir. The position I always took on that, under the administration of both Secretary Garfield and Secretary Ballinger, is correctly set forth in my letter of April 10 in the record, that it was a departmental and administrative matter on which our office

was not competent to advise. We knew the facts regarding the attempted acquisition of power sites. That was not, however, the position which Mr. Newell took. With Secretary Ballinger, Mr. Newell took the position of an active advocate of holding these lands and making restorations gradually, as the information developed. But I took no such position. I was working for the Reclamation Service, and I felt that the Reclamation Service was obliged to have the support of the Secretary, and I did not want to do anything to oppose his wishes. I knew that he had stated to me so positively that the matter was entirely illegal, and that he would have no respect for my legal opinion, and I thought it was idle and unnecessarily antagonizing the Secretary to make any argument on the subject. That is not the reason I made no argument to Mr. Garfield. I had the additional reason I had in the case of Mr. Garfield, that it was too big a matter for the Reclamation Service to initiate. It would simply be suicidal without the support of the administration clear to the top, and that we did not have. I knew that Secretary Ballinger was opposed to it; I knew that he felt it was illegal and unlawful. I felt it was almost a reflection on him to ask him to do something that he felt was illegal and unlawful.

The CHAIRMAN. I understood you to say that this withdrawal in the first place was unnecessary?

Mr. DAVIS. No, sir.

Mr. PEPPER. I think you must have misunderstood him about that.

Mr. DAVIS. I said that I would not have initiated the withdrawal of my own motion, in the first place.

The CHAIRMAN. Why?

Mr. DAVIS. For this reason: The Reclamation Service is a constant target for attack in the West, and I knew it would be unpopular among the local interests, and I did not care to expose the Reclamation Service to the criticism that I thought would follow, unless it had the support of the administration clear to the top, and the initiative of the administration in that policy.

The CHAIRMAN. But was not this withdrawal made in the first instance under Secretary Garfield?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. You had no obstruction from him? You could have made it so far as the Secretary was concerned?

Mr. DAVIS. Oh, yes. But Secretary Garfield initiated it; that is, he gave general orders—he did not initiate particular ones, but he gave general orders—to withdraw the power sites.

The CHAIRMAN. So you had no ground of any fear from Secretary Garfield to initiate this?

Mr. DAVIS. No, sir.

The CHAIRMAN. You seem to be disinclined to initiate it because of the public sentiment out West?

Mr. DAVIS. I did not decline to initiate it. I mean to say that I would not have initiated it on my own motion, on account of criticism, but was perfectly willing, and am very heartily in sympathy with the policy, but it is a policy that is beyond the regular Reclamation Service work.

Mr. JAMES. In other words, you thought it was wise to withdraw these lands originally and unwise to restore them?

Mr. DAVIS. I did.

Mr. JAMES. But on account of the fact that you were in the Reclamation Service, you did not feel you had any right to question either the withdrawal or the restoration?

Mr. DAVIS. That is it.

Mr. GRAHAM. And you wanted to use the Secretary as a buffer between your department and the people?

Mr. DAVIS. No; it would be more correct to say that I did not want the Reclamation Service to be used as a buffer between the people and the department.

Senator SUTHERLAND. Mr. Davis, I understood you to say that the only reason why you did not want the Reclamation Service mixed up in the matter was that it would prove unpopular with the people in the West?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. That is, it would prove unpopular with the people who were in close touch with the physical situation?

Mr. DAVIS. Perhaps so. By saying "people" I do not mean all the people, but the people who would complain.

Senator SUTHERLAND. You mean the settlers, in a general way, do you not?

Mr. DAVIS. No, sir; not in my own mind.

Senator ROOT. It would be unpopular with the people who did not like it?

Mr. DAVIS. Yes. It would be unpopular with those people who did not like it.

Senator SUTHERLAND. Do you mean the people on the Green River, Utah?

Mr. DAVIS. Yes. I did not have the settlers on the Green River in mind, but no doubt it was. But these settlers are not hard people to deal with as a rule. It gave an excuse for the multitudinous enemies that the Reclamation Service has in the West to hang criticism on.

Senator PURCELL. Those enemies are generally cattle men and sheep men and grazers.

Mr. DAVIS. Well, they are various kinds of men.

Senator SUTHERLAND. When you say that the thing is unpopular you mean with the general mass of the people, do you not, or only a few people?

Mr. DAVIS. That is a fair interpretation of the word, but I did not correctly express my idea.

Senator SUTHERLAND. What did you mean?

Mr. DAVIS. I meant that it would prevent a source of criticism by people who wanted a source of criticism.

Senator SUTHERLAND. Then you did not mean that it would be unpopular?

Mr. DAVIS. I think, perhaps, my use of the word was not quite accurate; unpopular in the sense of referring to all the people. However, it may be that the majority would be opposed to it. I do not know about that and do not pretend to.

Senator SUTHERLAND. You do not know what the fact is about that, whether the people throughout the West are generally opposed to it or not?

Mr. DAVIS. No; I do not. I say I do not know—I have a pretty strong impression that the great majority are in favor of this conservation scheme.

Senator SUTHERLAND. I am not speaking of the conservation scheme.

Mr. DAVIS. I mean the power-site withdrawals.

Senator SUTHERLAND. Yes; these wholesale withdrawals which were made. Do you mean that they were generally in favor of that?

Mr. DAVIS. I have not talked with many of the people about that in the West, but I think if they understood the full purpose and the way it could be explained, if they knew it all, that the majority would be in favor of it, but still that is a matter of opinion about which my opinion is not of much account.

Senator SUTHERLAND. Do you think, for example, that the people of Montana would be in favor of withdrawal of half a million acres, the majority of which you say was in private ownership.

Mr. DAVIS. I did not withdraw land in private ownership. Nobody can do that. Lands can not be withdrawn unless open to entry. Lands in private ownership are not subject to entry.

Senator SUTHERLAND. The order would be ineffectual, of course, but you undertook to withdraw nearly half a million acres, and you say here that the vast majority of it was under a private ownership. That is true, is it not?

Mr. DAVIS. No, sir.

Senator PURCELL. He said "I did it" without specifying a particular piece. Mr. Davis, you said you withdrew a body of land.

Mr. DAVIS. We withdrew a body of land in these areas and then described the areas.

Senator SUTHERLAND. You withdrew nearly half a million of acres of land in Montana, and after careful investigation by the Geological Survey it was considered that only a little over 3,000 acres of that land was necessary to be withdrawn. That it true, is it not?

Mr. DAVIS. No, sir.

Senator SUTHERLAND. What element in my figures was not correct?

Mr. DAVIS. Because a large area of that we are referring to is private land, and we do not withdraw any private land.

Senator SUTHERLAND. How much of it is in private ownership?

Mr. DAVIS. I do not know.

Senator SUTHERLAND. About how much?

Mr. DAVIS. I do not know.

Senator SUTHERLAND. Can you give any approximation?

Mr. DAVIS. No, sir; but I do know that a large part of the land in the Yellowstone Valley is under private ownership.

Senator SUTHERLAND. What do you mean by a large part of it; more than half of it?

Mr. DAVIS. I presume that in the valley more than one-half is in private ownership.

Senator SUTHERLAND. More than half?

Mr. DAVIS. I presume so.

Senator SUTHERLAND. More than three-quarters?

Mr. DAVIS. I do not know. I do not think my opinion on that is very valuable. I know there is a great deal of private land in there and that is about the extent of my information.

Senator SUTHERLAND. When the withdrawals were made did you have before you the information of what proportion of it was private lands and what public lands? Would not your map show?

Mr. DAVIS. No, sir.

Senator SUTHERLAND. The maps that are kept up in the Land Office would show, would they not?

Mr. DAVIS. No, sir; I do not think they keep any maps, but the records would show.

Senator SUTHERLAND. It is a very simple matter to determine by examination, is it not?

Mr. DAVIS. No, sir. It is a very complicated matter and takes a great deal of work and it is useless.

Senator SUTHERLAND. The tract books would show it in the Land Office, would they not?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. By a simple inspection of the books?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. You could get the tract book and see by the different colors on the map what amount was withdrawn, and what land was in private ownership and what was not, could you not?

Mr. DAVIS. I do not know of any records that have the lands shown in colors in the Land Office records.

Senator PURCELL. The order withdrawing this land did not affect land that the Government did not own.

Mr. DAVIS. Not at all, not in the least. The people holding that land would never know it if people did not state it.

Mr. JAMES. You did not undertake to withdraw private lands: you had no right to do it?

Mr. DAVIS. No, sir; it could not be done.

Senator FLETCHER. You spoke, Mr. Davis, a while ago, to use your expression, I think, of multitudinous enemies of the Reclamation Service.

Mr. DAVIS. Yes, sir.

Senator FLETCHER. To what enemies do you allude, and what was the cause of their enmity?

Mr. DAVIS. The causes are many. For instance, the most active are people who had incipient schemes that they tried to sell to the Reclamation Service and failed, and they attempted to induce or compel the Reclamation Service to purchase by attacks upon it. Those are the most active. There are also in connection with many projects, not all, but some, a body of people who are trying to escape their repayments of the amounts invested in Reclamation work to the Government, and they appear to believe that if they can convict the Reclamation Service of incompetency or extravagance, that they can make out a case by which they can escape the payment; and then there are others who have some other grouch, but these are the two principal causes of attacks such as I refer to.

Senator FLETCHER. You mean to say when you speak of enemies that they are embraced largely in those classes and are people who are self-seeking or have some selfish interest to subserve?

Mr. DAVIS. The classes I have described are of that character. I do not mean to say that there are not many honest people who conscientiously believe that the Reclamation Service has done wrong, believing a great many of the reports circulated, and they attack it conscientiously. There may be others of that kind.

Mr. PEPPER. Well, Mr. Davis, when you made your statement a few moments ago respecting a criticism or opposition that you were afraid of, and when I say afraid of, I mean in the best interests of

the service, did you refer to a general popular opposition to the reclamation project or to the specific influential attack of special interests?

Mr. DAVIS. I referred to the latter. The special interests I have tried to describe are the people who are active in attacking the service, and there are of course others who would be opposed to withdrawal in their vicinity.

Senator FLINT. Mr. Davis, the opposition that you refer to, as I understand your last statement, are those who are seeking rights in the public domains, such as power sites, and by reason of the withdrawal they can not maintain them.

Mr. DAVIS. Largely, that is one of the elements.

Senator FLINT. And the opposition by reason of that is to claim that the community in which this site is located, where the power would be generated, would be retarded by the fact that it has been withdrawn by the Reclamation Service or the Interior Department.

Mr. DAVIS. That may actuate some people.

Senator FLINT. Mr. Davis, I want to follow that up further—

Mr. DAVIS. I think that is all due to a misunderstanding of the purpose, however. There is no object in retarding.

Senator FLINT. As a matter of fact has the policy of withdrawing the sites for power purposes retarded in any instance the development of the country?

Mr. DAVIS. I do not think so. It may have retarded a few filings for a few months, but the development, I think, would be accelerated by the location and classification of the public lands in the way that this withdrawal policy provides for or contemplates. It will actually accelerate, and along the right lines, the development of the West. That is my belief.

Senator FLINT. So that, as a matter of fact, the opposition to the withdrawal of the power site is not a general opposition within the Western States, but simply a limited opposition of those particularly interested?

Mr. DAVIS. Yes; that is my opinion; but my experience has been in the Reclamation Service that the people who are opposed to that are the ones who do the talking and pull the wires, and that they are the ones heard from.

Senator FLINT. And that was the fear you referred to that they who desired to obtain special interest in the public domain would organize in opposition to the Reclamation Service?

Mr. DAVIS. And would attack it; yes, sir.

Mr. PEPPER. Mr. Vertrees, have you among your papers a letter of March 31, 1909, from Senator Carter to the Secretary?

Mr. VERTREES. Mr. Finney can answer that.

Mr. JAMES. Let me ask you a question. In the letter placed in the record to Senator Heyburn by Secretary Ballinger he says that in conjunction with the Attorney-General he will settle the question as to those withdrawals, as to whether or not they were illegal. In your letter, your dictation said that you had submitted it to the Attorney-General. Now, do you know whether or not this question was submitted by Secretary Ballinger to the Attorney-General?

Mr. DAVIS. I do not.

Mr. PEPPER. I will say, Mr. James, if it is not interrupting you, that I included in the call sent in some time ago a request for a re-

In an opinion dated January 17, 1882 (17 Op., 258), Attorney-General Brewster, in commenting on the above decisions and others, stated:

"It appears from these authorities that not only has the President the power to make reservations of public lands for public uses, but if the reservations are made by the heads of departments it will be presumed that the President has acted through them.

"In 5 Wallace, page 688, where the reservation in question was for the improvement of the Des Moines River in Iowa, the court says that the President was competent through the Secretary of the Interior to make the reservation, and that he had this power ever since the establishment of the Land Department.

"It has been shown above that the President has the power *generally* to reserve lands from the public domain for public uses."

This was also the opinion of Attorney-General MacVeagh (1 L. D., 30), who further stated:

"The question submitted, indeed, assumes the existence of the powers and suggests that there is doubt only as to whether it can be exercised with respect to lands which at the time are included in a preemption filing to homestead entry and to which steps have thus already been taken by an individual to acquire title under the general land laws.

"The power of the President, above adverted to, extends to lands which belong to the public domain of the United States and are subject to sale or other disposal under the general land laws. It is capable of being exercised with respect to such lands as long as they remain unappropriated and unreserved from the public domain, but no longer."

As to reservations of lands in Alaska, Assistant Attorney Shields, in an opinion dated June 17, 1890 (13 L. D., 426), held:

"The lands of Alaska are part of the public domain, and as such are subject to the supervision of the President as other public lands. There is no statute giving general authority to the President to reserve lands. But the right of the President to put public lands in reservation, so that all questions in reference to them might be properly considered, or as the exigencies of the public service demanded, or to aid in the execution of a proposed statute, has always been maintained by the courts."^a

These opinions are based largely upon the case of *Grisar v. McDowell* (6 Wall., 380). That decision concludes as follows:

"It only remains to notice the objection taken to the authority of the President to make the reservation in question. The objection is twofold—first, that the lands reserved did not constitute any part of the public domain but were the property of the city, and were not, therefore, the subject of appropriation by order of the President for public purposes; and, second, if they did constitute a part of the public domain, they could only be reserved from sale and set apart for public purposes under the direct sanction of an act of Congress.

"The first objection has been sufficiently answered in considering the nature of the claim of the city. It was not a claim to a tract which has been specifically defined; it was a claim only to a specific quantity embracing, it is true, the site of the public and adjoining lands, but which has yet to receive its precise limits and bounds from the officers of the Government. Until this was done, the Government was not precluded from setting apart and appropriating any portions of the lands claimed which might be necessary for public uses. Until then the claim of the city was subservient to the right of the Government in this respect.

"On the other hand, if the lands were at the time a part of the public domain, as they must be considered to be, because they have been excluded from the lands confirmed to the city in satisfaction of the claim, it is of no consequence to the plaintiff whether or not the President possessed sufficient authority to make the reservations in question. It is enough that the title had not passed to the plaintiff, but remained in the United States. But further than this, from an early period in the history of the Government it has been the practice of the President to order, from time to time as the exigencies of the public service required, parcels of lands belonging to the United States to be reserved from sale and set apart for public uses.

"The authority of the President in this respect is recognized in numerous acts of Congress. Thus, in the preemption act of May 29, 1830, it is provided that the right of preemption contemplated by the act shall not 'extend to any land which is reserved from sale by act of Congress, or by order of the President, or which may have been appropriated for any purpose whatever.'^b

"Again, in the preemption act of September 4, 1841, 'Lands included in any reservation by any treaty, law, or proclamation of the President of the United States, or

^a For further discussion, see Mem., 1 L. D., 702.

^b 4 Stat. L., 421.

Mr. PEPPER. The series that originated on March 17, as you have described?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. In point of fact, if you will look at the Senate document, is it not true that the letter to Senator Carter which you have just described was written on the same day that one of these so-called recommendations for restoration was submitted for the action of the Secretary? I refer to page 561 of the Senate document.

Mr. DAVIS. Yes, sir; that is the date. April the 7th, the same date.

Mr. PEPPER. And, turning the page, is it the fact that the actual approval by the Secretary was made three days later, or the 10th?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Now, Mr. Davis, did Mr. Ballinger at that, or about the same time that this inquiry came from Senator Carter, receive an inquiry about precisely the same subject-matter, to wit, the tributaries withdrawal from Governor Herrick?

Mr. DAVIS. Yes, sir; there is a letter, dated March 31, from Myron T. Herrick to the Secretary of the Interior.

Mr. PEPPER. Will you please read it?

Mr. DAVIS. It is as follows:

SOCIETY FOR SAVINGS,
Cleveland, March 31, 1909.

Hon. R. A. BALLINGER,
Secretary of the Interior, Washington, D. C.

MY DEAR MR. SECRETARY: I receive, from time to time, letters from friends of mine relating to matters under the direction of your department. Although I do not want to burden the department with these things, I feel that I can not do less than to refer these communications to you. The inclosed letter is self-explanatory. I sympathize with the western people in regard to many of these matters.

Very truly, yours,

MYRON T. HERRICK.

The letter inclosed with the above letter is as follows:

MADISON STATE BANK,
Madison City, Mont., March 25, 1909.

Hon. MYRON B. HERRICK,
Cleveland, Ohio.

DEAR SIR: You may recall that I met you at the national convention in Chicago, and that so far as my vote went was instrumental in naming our President, Taft. I know that you were one of the chief factors in assuring his nomination, and that you are close to the administration, which prompts this letter. A recent governmental order withdraws from entry all the lands along the Jefferson, Madison, and Ruby rivers. These lands are largely in this, Madison County, and the withdrawal of same from entry is a matter of vital interest to our people, as it checks the settlement of the county and keeps out many who would otherwise become bona fide settlers and desirable citizens. We suppose the withdrawal is made with the view of conserving the resources of the country, but we believe the best conservation is in inducing actual settlement, in the making of desirable homes, and the cultivation of lands which are now unproductive. If it is thought by our eastern friends that the irrigation of arid lands destroys the flow of the rivers, this is a mistake. Experience has proven that the waters used in irrigation, taken early in the season, while the streams are high, and spread over the cultivated lands, later are returned, through the increased flow of springs and tributaries, to the main stream, and this at a season when the streams are naturally low, so that the result, taken as a whole, is to equalize the flow during the year, returning to the rivers during low-water season the waters which were taken during flood time. Our people have protested to our Senators and Congressman against this withdrawal. If you can spare the time to look into this matter and will interest yourself enough to present our views to the administration, you will be doing us most valuable service.

May I venture to ask you to do so?

With regards, I am,

Yours, very truly,

A. J. BENNETT.

Mr. PEPPER. And is there inclosed with that the letter of a man named Bennett, which raises a protest or question respecting the Missouri tributaries withdrawal?

Mr. DAVIS. There is a copy of a letter.

Mr. PEPPER. Did you, upon receiving a reference of that letter of Governor Herrick, draft a reply to be sent to him?

Mr. DAVIS. I did.

Mr. PEPPER. What was the reply, if you are able to state?

Mr. DAVIS. The reply is here, with my initials on it, dated April 10. It reads as follows:

DEPARTMENT OF THE INTERIOR,
Washington, April 10, 1909.

HON. MYRON T. HERRICK,
Cleveland, Ohio.

SIR: In further reply to your letter of March 31, transmitting protest by Mr. A. J. Bennett, of Virginia City, Mont., against the withdrawal from entry of lands along the Jefferson, Madison, and Ruby rivers in Montana, it is found that the lands in question were withdrawn from all forms of entry February 16, 1909, preliminary to an examination of power sites in connection with the possible future development of water-power possibilities for irrigation or other uses.

The restoration to the public domain of the lands involved was ordered on April 7.

Mr. Bennett's letter is returned herewith.

Very respectfully,

Secretary.

A.P.D.

Mr. PEPPER. That is the letter which you drafted to be sent as a reply to Governor Herrick's communication?

Mr. DAVIS. It is.

Mr. PEPPER. Does that accord with the statement in the letter of April the 7th to Senator Carter that the restoration to the public domain had been ordered?

Mr. DAVIS. It does.

Mr. PEPPER. You understood that to be the fact at the time?

Mr. DAVIS. Yes, sir; I did.

Mr. PEPPER. And the order that you had in mind was the one that you have just stated a few minutes ago?

Mr. DAVIS. The general idea that I had that he had repeated many times that we should restore this land to the public domain. It was an order from the Secretary, initiated by him on the 17th of March and repeated at numerous intervals after that.

Mr. PEPPER. What action did the Secretary take on the draft which you submitted to him?

Mr. DAVIS. He crossed it out.

Mr. PEPPER. Is the draft which is crossed out the one that you have reference to?

Mr. DAVIS. The draft which he crossed out has my initials on it and is the one that I wrote.

Mr. PEPPER. Will you state whether or not he then prepared a modified form of the draft to be sent to Governor Herrick?

Mr. DAVIS. He did.

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R. A. BALLINGER, *Secretary*.

Mr. PEPPER. Is that the letter which finally went to Governor Herrick?

Mr. DAVIS. So the record shows.

The CHAIRMAN. Those letters are admitted in evidence.

Mr. PEPPER. In point of fact, was it true, in your opinion, at that time that the withdrawals appeared to be no longer necessary to the interests of the United States?

Mr. DAVIS. In my opinion it was as necessary then as it had been at any time. The necessity for it was a matter of opinion, however.

Mr. PEPPER. Had any change taken place in the information of the service, or, in so far as you know, the department, respecting the withdrawal which would have justified such a statement?

Mr. DAVIS. No change in the knowledge of the physical conditions had taken place. The only change had been a change in the administration.

Senator SUTHERLAND. What withdrawal is that?

Mr. PEPPER. The same withdrawal referred to in the letter to Senator Carter. It is the Missouri tributaries.

Senator FLETCHER. Is it the same that appears on pages 561 and 562 of the Senate document?

Mr. PEPPER. Yes, sir; that is the restoration and the original withdrawal.

Senator FLETCHER. And the restoration there seemed to have been dated February 7 and April 10.

Mr. PEPPER. That is true; in other words, the sequence was this: On April 10 a letter was written to Senator Carter and Governor Herrick in the language that has just been read, and on the same date there was signed this so-called recommendation of restoration, and three days later that became technically operative by the signature of the Secretary. The fact, as stated in the letter to Senator Carter, was the fact, was it not; that is, the restoration had been ordered?

Mr. DAVIS. Certainly; I so understood it or I would not have drafted the letter that way.

Mr. PEPPER. And the letter which you drafted as a reply to be sent to Governor Herrick was correct, was it not?

Mr. DAVIS. Yes, sir; it was, according to my understanding.

Mr. GRAHAM. Just there, if you please, Mr. Pepper, may I ask which letter was first in point of time, the letter sent by Secretary Ballinger to Senator Carter or the one sent to Governor Herrick?

Mr. DAVIS. I do not know.

Mr. PEPPER. They are the same date, I think.

Mr. GRAHAM. As a matter of fact, although of the same date, which was first in point of time?

Mr. DAVIS. I do not remember.

Mr. PEPPER. The letter to Senator Carter, as appears from an inspection of it, is dated April 7. The letter to Governor Herrick was April 10, three days later—I speak subject to correction.

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Mr. GRAHAM. Just there, if you please, Mr. Pepper, may I ask which letter was first in point of time, the letter sent by Secretary Ballinger to Senator Carter or the one sent to Governor Herrick?

Mr. DAVIS. I do not know.

Mr. PEPPER. They are the same date, I think.

Mr. GRAHAM. As a matter of fact, although of the same date, which was first in point of time?

Mr. DAVIS. I do not remember.

Mr. PEPPER. The letter to Senator Carter, as appears from an inspection of it, is dated April 7. The letter to Governor Herrick was April 10, three days later—I speak subject to correction.

Mr. GRAHAM. Had the facts changed in any way in the meantime?

Mr. DAVIS. No, sir.

Mr. PEPPER. Now, Mr. Davis, from this time on the restorations took place at frequent intervals. Can you tell the committee what determined the making of a restoration in a particular field to-day rather than to-morrow; in other words, what determined the order of the restoration?

Mr. DAVIS. The Secretary made no instructions regarding the order of restorations. I know I had a conversation with him once in which he reiterated his order to send in the restorations, and I think in following out his suggestion to do it gradually that was discussed in the same connection. I suggested it would be just as well to send in first those about which a complaint was being made, and in that way to stop the complaint. He acquiesced in that attitude.

Mr. PEPPER. In point of fact, were the restorations made as far as possible in the order in which the kicks came in?

Mr. DAVIS. Yes, sir.

Senator PURCELL. Mr. Davis, I notice in your letter that you use the language "from recent investigation?"

Mr. DAVIS. Yes, sir.

Senator PURCELL. You made no investigation, did you?

Mr. DAVIS. That is the printed form. We simply use the printed forms that are customary in those cases.

Mr. PEPPER. I call your attention —

Senator SUTHERLAND. Let me ask you a question there, Mr. Davis. There appear to have been protests here, one or two protests, of people in the West against those withdrawals. Were there others that have not been produced that you know of?

Mr. DAVIS. The one you spoke of from Utah, I remember, and there was one from Senator Carter, and this one from Governor Herick, and then there was one from the state engineer of Wyoming, transmitted by Senator Warren, that I recall.

Senator SUTHERLAND. Do you recall any others?

Mr. DAVIS. I do not for the moment. I do not think there were many others.

Senator SUTHERLAND. Do you know whether the subject-matter of withdrawals was talked about in the newspapers throughout the West?

Mr. DAVIS. I do not know as to that; no, sir.

Senator SUTHERLAND. Do you know whether the subject-matter was given publicity all through the Western States?

Mr. DAVIS. I presume it was. I do not know as to that, and I could not testify about it. You see, I did not go out West between the time of withdrawal and the time of restoration at all. I was in Panama and Porto Rico most of the time—in fact, I was in Panama and Porto Rico most of the time the withdrawals were made.

Senator SUTHERLAND. Did you receive any communications from the West on the other side of the question; that is, asking that the withdrawals be had?

Mr. DAVIS. I do not recall any.

Senator SUTHERLAND. Did you ever hear of any?

Mr. DAVIS. Not in that period. There have been suggestions of that kind made out there at times previous to that, which, I think, probably initiated the movement.

Senator SUTHERLAND. During the period that protests were being made against the withdrawals do you recall any communications upon the other side of that question?

Mr. DAVIS. No, sir; people do not send us commendation very often on that or any other subject.

Mr. PEPPER. From the list of those who objected to certain of those specific withdrawals you omitted Senator Heyburn, did you not? Was he not one of those who objected also?

Mr. DAVIS. Yes, sir; we have already had that.

Senator SUTHERLAND. I call your attention to the letter from Secretary Ballinger to Director Newell dated April 1, 1909, which is the letter in which he asks—

The CHAIRMAN. Is that in the record?

Mr. PEPPER. Yes, sir; it is in the record on page 557 of Senate document. You will see on looking at it, Mr. Davis, that that refers to certain previous withdrawals in Montana, Utah, and Oregon, and concludes with this paragraph:

You will please report to me the reasons, if any there are, whether statutory or otherwise, why these lands should not be restored to entry under the public-land laws.

Very respectfully,

R. A. BALLINGER, *Secretary*.

Do you happen to know what action Mr. Newell took upon the receipt of that letter?

Mr. DAVIS. That letter comes as near being a response to Mr. Newell's request for a written order on the subject of anything we received, and when that was received I think there was some slight discussion of it and Mr. Newell drafted a reply. He was on the eve of starting to the West, and as usual the draft was made on a sheet of thin pink paper—cheap paper—for correction, and my letters are usually drafted in that way, and he had marked it up with pen and pencil in various ways to suit himself. Just before he started West he came into my room and said he had drafted this letter in reply to the Secretary's letter and told me to read it over, and if I did not like it to prepare something else to send in place of it in reply to the letter. Then he went West. I read the letter—it was a long one, two or three pages—and Secretary Ballinger had complained to me of the length of some of Mr. Newell's communications and also of his disposition to not cooperate but oppose his wishes. This letter had both faults, and I did not think it would please the Secretary, and at any rate it was not in accordance with my attitude. Mr. Newell had taken the attitude of urging that these withdrawals he held; I had taken the attitude that it was not the business of the Reclamation Service to recommend on that point; it was a departmental and administrative matter that I did not want to dip into simply to follow out instructions. So I did not like Mr. Newell's letter for those reasons, and I drafted one of my own, which is, I believe, in the back part of this book.

Mr. PEPPER. Is that the letter that appears in the supplement to Senate Document 248, on the very last page thereof?

Mr. DAVIS. It is.

Mr. PEPPER. Dated April 10, 1909?

Mr. DAVIS. It is on page 2 of Senate Document No. 291.

Mr. PEPPER. It is, in fact, a supplement to Senate Document 248.

The CHAIRMAN. The last document?

Mr. PEPPER. That is right.

Mr. DAVIS. It is a supplementary document.

Mr. PEPPER. That is one of the documents that came down to the committee subsequently to the making up of Senate Document 248

Mr. DAVIS. I drafted this letter:

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Washington, D. C., April 10, 1909

SIR: I am in receipt of your letter of April 1, giving instructions to report the reasons, if there are any, why certain lands in the States of Montana, Utah, and Oregon should not be restored to entry under the public-land laws.

The area of 677,000 acres mentioned in your letter is probably the total area of the townships and sections named in the various lists. A large portion of each of these townships has already passed out of the control of the United States, and the withdrawal would not affect lands where title had already been initiated.

In making these withdrawals it is understood to have been the policy to make examinations as early as possible with the purpose of restoring the major portion of the lands, after reserving areas which include natural falls, dam sites, or other natural opportunities, for the cheap development of power.

These lands were withdrawn by order of Secretary Garfield in accordance with a policy adopted by the Cabinet of President Roosevelt for the purpose of checking the acquisition of valuable power sites in the mountain regions of the West by syndicates, which were believed to be attempting to monopolize all the available power possibilities in certain regions.

That such attempts at power monopoly are being actively and extensively made seems to be well established, but whether it can be prevented or materially checked by executive action under present laws is a question involving points of law and of administrative policy upon which this office is not competent to advise.

Very respectfully,

A. P. DAVIS, *Acting Director*

The SECRETARY OF THE INTERIOR.

I drafted that letter and this statement with draft attached to Mr. Newell's draft to Mr. Bean, who is the legal adviser of the Reclamation Service, and in whom both Mr. Newell and I have great confidence in his good sense, and Mr. Bean read it over and said he preferred mine, so I sent mine (and I also preferred it) to the Secretary.

Mr. PEPPER. The draft made by Mr. Newell was or was not a correct statement of the position that he had taken up to that time and has taken right along?

Mr. DAVIS. So far as I know Mr. Newell's position—and I had heard him speak with the Secretary several times and talked with him privately—that draft represented his ideas. It was an urgent recommendation to hold the power sites and proceed with the examination and restore all the lands not absolutely needed as fast as they could be segregated from the others.

Mr. PEPPER. You have spoken, Mr. Davis, of a correspondence with Senator Warren. There was correspondence with him on or about April 1, was there not, respecting the withdrawal of the North Platte and the Big Horn and the Green River?

Mr. DAVIS. There was some correspondence with Senator Warren on that subject about that time, but just what it covered I do not now recall. I think Senator Warren transmitted a long letter of the state engineer, if I remember rightly, and I had some correspondence with the state engineer on the subject.

Mr. PEPPER. And did you prepare a reply to be sent to Senator Warren?

Mr. DAVIS. I believe so.

Mr. PEPPER. Mr. Finney, if I may suggest, there does not appear to be in this file a letter to Senator Warren excepting the one of April 6.

Mr. FINNEY. That is explained, I presume, the same as the letter from Senator Heyburn. They were sent to the Reclamation Service for answer, and they are in their files. They are not included in our files.

(At 1 o'clock p. m. the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at 2 o'clock p. m.

The CHAIRMAN. A quorum is present. The committee will come to order and we will proceed.

Mr. PEPPER. Mr. Davis, I draw your attention to page 558 of the Senate document and ask whether on that page you find the restoration of the Missouri, Swan, and Big Horn withdrawal.

Mr. DAVIS. The Swan River and Missouri River are here on page 558.

Mr. PEPPER. That is true. Senate Document 248, I think, Mr. Chairman, contains only the restoration of the general power-site withdrawals. The Big Horn withdrawal was a reclamation withdrawal, but that does not appear. But, as you say, the Missouri River and the Swan River restorations do appear on the page indicated.

Mr. DAVIS. Yes, sir.

Mr. PEPPER. On or about April 8, did the Secretary bring to your attention a letter addressed to him under date of April 7 by Thomas E. Will.

Mr. DAVIS. He did.

Mr. PEPPER. Was that letter an inquiry respecting any particular withdrawal or restoration, or a general inquiry?

Mr. DAVIS. It is a general inquiry. It says:

HON. RICHARD A. BALLINGER,
Secretary of the Interior, Washington, D. C.

DEAR SIR: I have noticed several statements in the papers of late, one of which I inclose, regarding restoration of sections of the public domain withdrawn by President Roosevelt.

Will you kindly furnish me the facts, together with such information as may be appropriate, regarding these restorations, that I may make mention of the matter in the magazine *Conservation*?

Very truly, yours,

THOS. E. WILL.

Mr. PEPPER. What is the memorandum inclosed? It is very brief; you may read it.

Mr. DAVIS. The heading is simply "Public lands restored by Taft."

MORE PUBLIC LANDS RESTORED BY TAFT.

More of the public domain which was withdrawn under the Roosevelt administration, in pursuance of his conservation policy, was restored to-day under order of President Taft.

The quarter of a million acres in the Salmon River country, Idaho, which was withdrawn in February to prevent the acquisition of several power sites, was restored. A thousand acres of land near Bear Lake, Utah, was also restored.

The Salmon River land becomes subject to settlement at once, and the Bear Lake subject to settlement June 29 and to entry July 29.

Mr. PEPPER. I direct your attention to page 1171 of the printed testimony and ask you what happened when Mr. Ballinger had received that letter from Mr. Wills? Did he show it to you?

Mr. DAVIS. I do not recall whether he showed me Mr. Wills's letter or not. He brought the substance of that to my attention; I think he read it to me.

Mr. PEPPER. Did he show you his reply?

Mr. DAVIS. I think he read that also to me.

Mr. PEPPER. Would you read that reply?

Mr. DAVIS. The reply is in the record, on page 1171.

DEPARTMENT OF THE INTERIOR,
Washington, April 8, 1909.

SIR: The lands which you refer to as having been restored to entry in your letter of the 7th instant were withdrawn under what was denominated as the supervisory authority of the Secretary, in connection with future development, upon the report of the Acting Director of the Reclamation Service. The restoration was made likewise upon the report of the acting director on the ground that recent investigations showed that said withdrawal no longer appeared necessary to the interests of the United States.

Very respectfully,

R. A. BALLINGER, *Secretary*.

Mr. PEPPER. Mr. Davis, has there in fact been any recent investigations such as are therein referred to?

Mr. DAVIS. No, sir.

Mr. PEPPER. Did it appear, so far as you know, that the withdrawal was no longer necessary to the interests of the United States?

Mr. DAVIS. It was as necessary as it had ever been. In my judgment it was. That, however, is a matter on which the Secretary might honestly differ.

Mr. PEPPER. But the question now is whether there has been any development, any matter of fact to your knowledge, within or without the department, which changed the status in regard to that withdrawal.

Mr. DAVIS. There has not, so far as I know.

Mr. PEPPER. In point of fact, is it or is it not true that the necessity of at least part of the withdrawals appears from the fact that subsequently some of the land withdrawn was restored, or rather I should say some of the land restored was withdrawn?

Mr. DAVIS. This, I believe, refers to——

Mr. PEPPER. Salmon River.

Mr. DAVIS. Salmon River.

Mr. PEPPER. Page 86.

Mr. DAVIS. My recollection regarding the Salmon River is that examination of the land office records showed that the major portion of that was private land, but some subsequent withdrawals were, however, made of a similar nature to those on the lower Yellowstone, I take it. That is, such public lands as lay near the rivers were subsequently withdrawn; such a wide strip as we had denominated, and after eliminating the private lands from the list.

Mr. PEPPER. Will you look at page 86 and refresh your recollection as to whether or not there was not afterwards, on May 29, a Salmon River rewithdrawal of some fifty-odd thousand acres?

Mr. DAVIS. Yes, sir; of which 2,360 were entered.

Senator FLETCHER. Mr. Davis, these rewithdrawals were made by direction of Secretary Ballinger?

Mr. DAVIS. Yes, sir; I suppose so. In fact, I know they were.

Senator FLETCHER. If the withdrawal in the first instance was without authority of law, would not the rewithdrawals be subject to the same criticism?

Mr. DAVIS. I know of no legislation in the interim.

Mr. GRAHAM. Did he differentiate the rewithdrawal in any way from the withdrawal?

Mr. DAVIS. The wording used in the rewithdrawal was different from that used in the withdrawal.

Mr. GRAHAM. Was that a verbal or substantial difference, in your opinion?

Mr. DAVIS. Verbal only, in my judgment.

Mr. OLMSTED. What was the difference?

Mr. DAVIS. A second withdrawal—they are both given in the record.

Mr. OLMSTED. You say that they are different; point out the difference.

Mr. DAVIS. The date is May 29. The first withdrawal is February 17.

Mr. PEPPER. You might take as a specimen, although it is not this same case, that on page 590.

Mr. OLMSTED. Why not take the same case?

Mr. PEPPER. I thought it might save a minute or two. They are all the same, Mr. Olmsted.

Mr. VERTREES. Five hundred and sixty-eight is the Salmon River.

Mr. DAVIS (reading):

TEMPORARY POWER-SITE WITHDRAWAL NO. 11.

[Flathead River, Montana—Montana principal meridian.]

In aid of proposed legislation affecting the disposal of the water-power sites on the public domain, all public lands in the following list are temporarily withdrawn from all forms of entry, selection, disposal, settlement, or location, and all existing claims, filings, and entries are temporarily suspended. All valid entries heretofore made may proceed up to and including the submission of final proof, but no purchase money will be received or final certificate of entry issued until further orders.

Mr. OLMSTED. Was that the rewithdrawal?

Mr. DAVIS. Yes, sir.

Mr. OLMSTED. How did the withdrawal read?

Mr. DAVIS. What page is that on?

Senator SUTHERLAND. What page are you reading from?

Senator PURCELL. Page 586.

Mr. PEPPER. The original entry is page 573, I think.

Mr. DAVIS. Yes; on page 573 the letter of original withdrawal reads as follows:

DEPARTMENT OF THE INTERIOR,
RECLAMATION SERVICE,
Washington, February 17, 1909.

The SECRETARY OF THE INTERIOR.

SIR: In accordance with your request to be advised of any power sites which may be regarded as of importance with a view to the conservation of the water resources, it is respectfully recommended that under the supervisory power of the Secretary the following described lands be reserved from all forms of entry in order that they be held available for the benefit of the public in connection with future development.

SALMON RIVER, IDAHO.

Then follows the list.

Senator SUTHERLAND. The essential difference there seems to be, as I read it, that in the latter case—that is, in the case of the rewithdrawal—it is done in the aid of proposed legislation?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Which would seem to imply, would it not, that that withdrawal was temporary, awaiting the action of Congress, while the other withdrawal seems to be permanent in character.

Mr. DAVIS. There is no statement of whether it is permanent or temporary in effect. What they call the blanket withdrawal was designed to be temporary in the sense that it was subject to modification and the subsequent policy to be determined as the Secretary or the President saw fit, I suppose.

Senator SUTHERLAND. But in the original withdrawals the language is, "With a view to the conservation of the water resources."

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. "It is recommended under the supervisory power of the Secretary that the following-described lands be reserved in order that they may be held available for the benefit of the public in connection with future developments." Then in the rewithdrawals the language is, "In aid of the proposed legislation affecting the disposal of the water-power sites on the public domain all public lands in the following lists are temporarily withdrawn." And so on. And I ask you whether or not in the latter case—that is, the case of the rewithdrawals—it does not seem to be implied from the language of the withdrawal that it is temporary in character, awaiting the action of Congress.

Mr. DAVIS. It does.

Senator SUTHERLAND. And in the first case?

Mr. DAVIS. The language does not imply that.

Senator SUTHERLAND. The withdrawal is permanent in character in the first place, but you simply state your view of the matter?

Mr. DAVIS. Well, it is a matter of inference from the first one. In the second, of course, it is very plain that it is temporary.

Mr. PEPPER. Do you know, Mr. Davis, of any way in which a withdrawal can operate in aid of congressional legislation except by preserving the status quo until Congress does legislate?

Mr. DAVIS. The withdrawal does render legislation more effective. I can not say that it does aid it in any other way.

Mr. PEPPER. That is, it preserves the subject-matter until Congress does legislate?

Mr. DAVIS. Yes, sir; makes it more effective.

Mr. PEPPER. Was there anything in the policy of the original withdrawal, so far as you know, which involved any attempt to exclude the action of Congress when Congress should be ready to act?

Mr. DAVIS. Certainly not. And it was my general understanding that it was expected that legislation would be asked for to render the handling of these power sites more nearly in accord with the ideas of the administration.

The CHAIRMAN. Are there any important instances, Mr. Davis, of power-site entries at the time of these blanket withdrawals?

Mr. DAVIS. Not entries in the technical sense; no, sir. But there was legislation in effect providing for the utilization of power sites as such.

The CHAIRMAN. By leasing or permits simply?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. But otherwise there was no law providing for power-site entries?

Mr. DAVIS. That is my understanding; yes, sir.

Mr. PEPPER. But was there such a law in the case of entry—withdrawals expressed to be temporary?

Mr. DAVIS. I do not know. That is a legal question, whether the law of 1901 would apply to temporary withdrawals, and I would not express an opinion on that.

Mr. PEPPER. Excepting the act of 1901 that you have referred to, you know of no legislation applicable to this point?

Mr. DAVIS. No, sir; I do not know of any. However, I am not setting up as an expert on law.

Senator SUTHERLAND. I understood you to say, Mr. Davis, that the difference was purely verbal?

Mr. DAVIS. I do.

Senator SUTHERLAND. You do think there is any substantial difference then?

Mr. DAVIS. There is an implied difference in the act of the fact of the intentions regarding it, but not in the act itself.

Senator SUTHERLAND. But wouldn't there be a very substantial difference in the latter case, operating somewhat in the way of a temporary injunction, while in the former case it was a final judgment, if I may use that illustration?

Mr. DAVIS. Well, there may be a technical distinction of that kind. That never has occurred to me before.

Mr. GRAHAM. If I get your thought rightly, you mean that if the Secretary did not have power at all, he could not exercise a power he did not have even for a temporary purpose?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Well, Mr. Davis, assuming the Secretary had the power to withdraw power sites, that power could not extend further than was necessary for conserving those sites, could it?

Mr. DAVIS. I think it could extend to the—you are correct, I think—that is a correct statement; yes, sir.

The CHAIRMAN. It would not warrant a blanket withdrawal?

Mr. DAVIS. Well, a blanket withdrawal is necessary in some cases to conserve the power sites.

The CHAIRMAN. That is your opinion?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. But is there not a distinction between a blanket withdrawal, withdrawing an enormous quantity of land haphazard without any prior examination, and a withdrawal made after examination for a specific and limited purpose?

Mr. DAVIS. There is a distinction, of course.

The CHAIRMAN. In fact?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Are any of the withdrawals that were made under Secretary Garfield on December 4, 1908, or subsequently, directly

characterized as per the chairman's last question, as being made haphazard and without accurate knowledge, and so forth?

Mr. DAVIS. Well, that is a matter of opinion. I hardly think so.

Mr. PEPPER. Well, I want to know whether or not your answer to the chairman's question was not an assent to the implied effect that that is a proper characterization of the withdrawals that were made in 1908 and the early part of 1909?

Mr. DAVIS. I do not so regard them. I know the Geological Survey does, but I do not.

Mr. PEPPER. Apart from the legal question, Mr. Davis—

The CHAIRMAN. Let me ask you. The Geological Survey takes a different view of this matter, of these blanket withdrawals, from what your bureau does, does it not?

Mr. DAVIS. I do not know about that.

The CHAIRMAN. Were not these restorations made upon the report of the Geological Survey?

Mr. DAVIS. Yes, sir; not the restorations, the withdrawals were.

The CHAIRMAN. That is what I mean. Restorations to withdrawals, the rewithdrawals.

Mr. DAVIS. Yes, sir; restoration.

The CHAIRMAN. They were made on the recommendation of the Geological Survey?

Mr. DAVIS. Initiated by the Secretary.

The CHAIRMAN. Yes; but on their report as to what quantity of land that was needed for each power and each stream?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. So that the Secretary in making those new withdrawals did not act haphazard, but acted upon the specific report of the Geological Survey, did he not?

Mr. DAVIS. Yes, sir. So did the other Secretary in the first case act on the specific report of the Reclamation Service.

The CHAIRMAN. But you included a lot of lands in your project and lot of lands part entered and part of them really not lands, as set out by the report of the Geological Survey, did you not?

Mr. DAVIS. I do not think so.

Senator FLINT. You never had an opportunity to examine the lands to ascertain whether or not they were needed, have you?

Mr. DAVIS. No, sir. You said as reported by the Geological Survey. I think that perhaps that is true. They have reported that some withdrawals were not necessary, but I do not agree with them.

The CHAIRMAN. That is a conflict between you and them, then?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. But you charge that conflict to Secretary Ballinger.

Mr. DAVIS. How is that?

The CHAIRMAN. You charged that conflict to Secretary Ballinger, did you not?

Mr. DAVIS. I have charged nothing against Secretary Ballinger. I have made no charges. I do not propose to make any.

Mr. PEPPER. Waiving the legal question which has been discussed—

Senator PURCELL. He has not finished that answer he made there.

Mr. PEPPER. I withdraw that question. Mr. Davis, one of the Chairman's questions related to two points; one the inclusion in your

original withdrawal of entered land, and the other the inclusion of land since ascertained to be unnecessary for power production.

Mr. DAVIS. Yes, sir.

Mr. PEPPER. As to the first point, what would you say to that?

Mr. DAVIS. The Secretary made no withdrawal of private land. He can not make any withdrawal of private land. And I wish to say on that point that the inclusion of all the areas, whether public or private, in the description was the practical point of the Reclamation Service from the first, and we have had too much experience on that line to take instruction from the Geological Survey or anyone with less experience, because we know it is dangerous to do that, to try to exclude the private lands. In the first place the Land Office records are not always accurate, and in consequence it involves such a complication of examination and such a lot of clerical work that errors are bound to creep into it. So that it has been the uniform practice since the passage of the reclamation act where an area is affected in this way it has to be entered on the Land Office record as a withdrawal of everything there. It does not affect private land; it has nothing to do with it; but it does include everything else.

Senator SUTHERLAND. In your answer you seem to have entered lands and private lands the same. Do you mean that?

Mr. DAVIS. No; I did not say anything about entered lands.

Senator SUTHERLAND. Well, the question by the chairman, as I understand it, was confined to entered lands. He did not ask you anything about private land, and your answer—

Mr. DAVIS. Well, I might have made a mistake.

Senator SUTHERLAND. It seemed to imply that you intended to say that the two things were the same.

Mr. DAVIS. Well, I understood him to mean lands that had been entered whether patented or not. They are not affected by the withdrawal.

Senator SUTHERLAND. So that your answer to the chairman would stand as you originally made it after that explanation?

Senator PURCELL. Now, I do not think that I understand that yet. Won't you please explain it again; just what you mean?

Mr. DAVIS. I mean that if certain lands are necessary for a reclamation project or other use for which they might be withdrawn, and the direction of them having been entered or patented, that the policy has been since 1902, and still is, and should be continued unless changed, to enter upon the Land Office records that the total area is withdrawn. That simply operates as an order to the Land Office officially not to receive any entries on that area. If the land has been entered, of course the action is without effect. If the land has not been entered, it excludes that from entry. Now, if you attempt the other course, errors are bound to creep in. These records are extremely voluminous, and it is very easy to show NE SC and that changes the whole thing.

Senator SUTHERLAND. Now, Mr. Davis, it is quite true that it could have no effect upon the private lands; but might it not have an effect upon lands that had been merely entered that had not proceeded to final payment—final proof—but had merely been entered?

Mr. DAVIS. It has the effect, as explained this morning, of introducing one or more processes in the necessary act of getting a patent.

They refer to lands which have been previously entered and which are applied for patent on area. These withdrawal areas they refer to the Reclamation Service, and the policy has been that if those lands are immediately needed the Reclamation Service then, when patent is applied for, reports that fact to the Secretary of the Interior and steps are taken to purchase the inchoate right or to take the necessary legal steps to acquire title to that land. If they are not immediately needed they are passed to patent.

Senator SUTHERLAND. But in the case of merely entered lands that had not proceeded to final proof, the withdrawal would prevent any further steps being taken by the entryman to secure title until this particular land had been released, would it not?

Mr. DAVIS. No, sir. It prevents nothing. The withdrawal prevents entry. If the entry has already been made it has no effect on that land as passed, or the owner applies for patent.

Mr. MADISON. Suppose the land to be homestead land, when is an entry made? What is the process of making an entry?

Mr. DAVIS. Application is made to the land office, and the payment of the entry fee, accompanied by proof that the entryman is entitled to make an entry.

Mr. MADISON. That means a filing on the land, and the filing amounts to an entry?

Mr. DAVIS. Yes, sir; that is my understanding.

The CHAIRMAN. I want to say, for the information of Mr. Madison, that in the matter of homesteads there are two entries. There is first the preliminary or initiatory entry and then there is the final entry, when final proof is made and the receipt is given.

Senator PURCELL. That is a distinction that has not been carried through on some of the discussion here. We speak of an entry, and there may be two entries.

Senator SUTHERLAND. I have been careful to so distinguish.

Mr. MADISON. That is just the very point I am getting at. I live in a homestead country, and I am much obliged to the chairman for making the suggestion; but I am somewhat familiar with that part of the business. We will say that that is the preliminary entry. Now, assuming that the settler after having made the entry, the preliminary entry, has six months on which to locate on the land. Now, we will assume that at the end of six months he moves onto the land and lives there for six months as a homestead settler. He has made his preliminary entry and has now settled on the land and is a settler. Now comes along the Secretary of the Interior and withdraws the land. Now, tell us what the effect is upon that land of that withdrawal?

Mr. DAVIS. The effect is nothing at all until the entryman attempts to make final proof and receive the final certificate. When he applies for that and submits his proof, it goes through the regular local land-office process, and it is then forwarded to the local land office, and then the local land office refers that matter to the Reclamation Service, and if they require the land in the near future for reclamation purposes steps are taken to extinguish the inchoate title that is necessary to acquire it.

Mr. MADISON. All right. What steps are taken?

Mr. DAVIS. Recommendation is made from the Reclamation Service to the Secretary of the Interior that this land be purchased, or

that the entry be canceled and proper compensation made to the entryman for his improvements.

Mr. MADISON. How is that compensation made and to what extent?

Mr. DAVIS. I do not know that I can give you the particulars of that. I know that we have done it in many cases.

Mr. MADISON. Is done by initiation with the settler?

Mr. DAVIS. Yes, sir.

Mr. MADISON. And he is paid to his satisfaction, ordinarily?

Mr. DAVIS. Yes, sir.

Mr. MADISON. To surrender the land?

Mr. DAVIS. That is my understanding of it.

Mr. MADISON. And release it back to the Government?

Mr. DAVIS. That is my understanding of it. That, however, is a legal matter in which I am not very well posted.

Mr. MADISON. In other words, the right to take the land for reclamation purposes or for water-site purposes is a higher right and a higher use of the land than the homestead use, and so esteemed?

Mr. DAVIS. I presume so; yes, sir. The reclamation law gives the right of eminent domain to the Secretary, and that would follow.

Mr. MADISON. But no harm is done the settler, in that he receives a financial remuneration for all that he has done, for his improvements?

Mr. DAVIS. Yes, sir.

Mr. MADISON. And for his inchoate right in the land?

Mr. DAVIS. Yes, sir. My understanding is, and it has been frequently stated in official letters, that the only object in having this regulation by which the Land Office requires of the Reclamation Service the inquiry as to whether the land is immediately needed or not—the only object in that is to save two transfers. It does not change the legal status a particle. The other process would be to issue patent without inquiry from the Reclamation Service, and the Reclamation Service, through the Secretary, would proceed to initiate or condemn the property needed. Now, the process is somewhat shorter and cheaper and quicker to simply hold patent until the negotiations are completed and settled in the same way as if the patents had been issued.

Mr. PEPPER. In what you have just been explaining, are you referring to a practice which has grown up since these withdrawals began to be made by Secretary Garfield, or are you speaking of a well-established practice in the Department of the Interior, and with special reference to the Reclamation Service?

Mr. DAVIS. It is of long standing; it has been the practice ever since the question came up, beginning in 1902 or 1903.

Mr. PEPPER. Now, apart from these questions of law which have been under discussion and coming back to that Will letter, is it a fact, as it appears therein to be stated or implied, that there had been investigations or developments which indicated that the retention of the land was unnecessary for the interests of the United States?

Mr. DAVIS. There had been no such investigation.

The CHAIRMAN. Mr. Davis, is it not the duty of the Secretary of the Interior when he has withdrawn land for irrigation or reclamation projects to ascertain as soon as possible what lands are needed, and if more are withdrawn to immediately restore them under the law?

Mr. DAVIS. I think so.

The CHAIRMAN. So that under the reclamation law it was the duty of the Secretary to ascertain as soon as possible what lands were not needed for the particular project and restore those lands to entry?

Mr. DAVIS. In my judgment it was.

The CHAIRMAN. So that the Secretary acted within the law in making those restorations, and in restoring the land—I mean putting the land back that was actually needed—he acted within the law, did he not?

Mr. DAVIS. You mean restoring the lands that were actually needed?

The CHAIRMAN. I mean he was within his rights when he revoked the withdrawal and then examined them and restored the lands that were actually needed?

Mr. DAVIS. I think these withdrawals and restorations have all been within the law.

The CHAIRMAN. Both by Secretary Ballinger and Secretary Garfield?

Mr. DAVIS. By both of them.

The CHAIRMAN. By both of them under the law?

Mr. DAVIS. I think so, so far as I understand the law.

Mr. PEPPER. So far as you understand the difference, it is a difference of policy and aim?

Mr. DAVIS. Well, one answer applies at one time and another at another time. The policy and aim of Secretary Garfield were certainly reversed by the present Secretary in March, and that policy was again reversed in April, so that sometimes it is the same and sometimes it is not.

Mr. JAMES. How many acres of land that were withdrawn by Secretary Garfield were restored by Secretary Ballinger?

Mr. DAVIS. I do not know. The acreage is large. It is in the record, I believe.

Mr. JAMES. Can you tell the committee how many acres of land Secretary Ballinger restored that he afterwards withdrew?

Mr. DAVIS. I can not myself, but this document shows it.

Mr. JAMES. I want you to look at page 1189 of the testimony, the President's letter to Secretary Ballinger.

Mr. PEPPER. I am going to question him about that, but if you desire to ask him the question now——

Mr. JAMES. It is all right if you are going to question him about it.

Mr. PEPPER. I suggest your consideration once more on the Will letter, and ask you upon looking at it to tell me whether, when it was submitted to you, or shown to you by the Secretary, you noted an implication in it that the Acting Director of the Reclamation Service had been responsible for these restorations or the initiation of them?

Mr. DAVIS. I noticed that; yes, sir.

Mr. PEPPER. Were the facts in accordance with that implication?

Mr. DAVIS. Not according to my understanding.

Mr. PEPPER. Did you make any comments?

Mr. DAVIS. I did not.

Mr. PEPPER. Well, there was an obvious comment to make, was there not?

Mr. DAVIS. Depending on—you mean that ought to have been made?

Mr. PEPPER. No. Whether there was any comment that you either thought ought to be made, or if one occurred to you, give the reason why you did not make it.

Mr. DAVIS. I was pursuing the policy, and had been from the first, of following as closely as I could the wishes of the Secretary as I found them. I came back from Porto Rico and found Secretary Ballinger very deeply prejudiced against the Reclamation Service. He had announced to me a number of times, and newspaper clippings to the same effect had announced to the public—that is, newspaper items had announced to the public the fact that he had determined to reorganize the Reclamation Service and make radical changes in it. I considered that the most important question before me, and I was very anxious to do nothing that would further antagonize the Secretary, and I followed his wishes as closely as possible without antagonizing him. That was the reason I made no comment on that letter.

Senator FLINT. What date did you return from Porto Rico?

Mr. DAVIS. I returned on the 16th of March, or the morning of the 17th. I haven't my diary with me, but that is about the date.

Senator FLINT. When did you start on the western trip?

Mr. DAVIS. In June following.

Senator FLINT. The following June?

Mr. DAVIS. Yes, sir.

Senator FLINT. You heard the Secretary make his addresses to the people in the western States during that trip, did you not?

Mr. DAVIS. Yes, sir.

Senator FLINT. Also your addresses and the other members of the committee?

Mr. DAVIS. Yes, sir.

Senator FLINT. And during that time was not the addresses of the Secretary favorable to the Reclamation Service?

Mr. DAVIS. So far as appeared in public, the addresses were; yes, sir.

Senator FLINT. I am limiting you now to the addresses he made to the people there on that western trip.

Mr. DAVIS. Yes, sir.

Senator FLINT. They were favorable in commenting on the Reclamation Service, for the manner in which they conducted their business?

Mr. DAVIS. There was some commendation in his western addresses.

Senator FLINT. Was it not very marked?

Mr. DAVIS. I did not so regard it; sometimes it was. There were a few times it was. But I thought, and I still think, that as the Secretary proceeded with his travels his attitude toward the service became more favorable.

Senator FLINT. In the public addresses that he made there was no criticism of the service in any way, was there?

Mr. DAVIS. Not in the public addresses. This letter of Will is dated April 8. According to this record the answer is dated before the letter itself.

Senator SUTHERLAND. When you say the Secretary made no criticism in his public addresses, do you mean he did make criticisms in private?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Some criticism which you heard yourself.

Mr. DAVIS. Oh, yes; I recounted this morning a long list of them that he made to me in private.

Senator SUTHERLAND. I am speaking now of what was said on this trip of the Irrigation Committee.

Mr. DAVIS. Yes; he criticised it frequently.

Senator SUTHERLAND. In private to you?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Well, criticising your action with reference to particular projects you were passing over?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. And calling attention to specific things?

Mr. DAVIS. Yes, sir; in a few cases to specific things, yes, sir. I do not mean by that that his criticism was at all unreasonable or caustic, but I heard criticisms, that is all.

Senator SUTHERLAND. Do you mean by that the criticism was unfair?

Mr. DAVIS. No, sir; I have not said that. It is a matter of judgment whether or not it was unfair.

Senator SUTHERLAND. What is your judgment about it?

Mr. DAVIS. I think sometimes it was unfair, yes, sir; not intentionally so, but it struck me so.

Senator SUTHERLAND. Would you say that any of his criticisms were in bad faith?

Mr. DAVIS. Oh, not at all; no, sir.

Senator FLINT. Give us a specific instance of criticism on those projects in the western trip of the Secretary.

Mr. DAVIS. One of the criticisms that impressed me was at the office at Rupert, Idaho, on the Mendota project; he looked at a sidewalk which was built in the yard and said that concrete was too thick; he said it was a waste of money to build that sidewalk as thick as that. He could only see the edge of it. I did not know myself how thick it was, other than at the edge, but it was a good sidewalk.

The CHAIRMAN. Do you regard that as a very serious reflection on the Reclamation Service?

Mr. DAVIS. Not very.

Senator SUTHERLAND. Can you give us another specific instance of criticism on that trip?

Mr. DAVIS. Yes, sir. If I think a short time I think I can give you some.

Mr. OLMSTED. How thick was that sidewalk?

Mr. DAVIS. Five or six inches on the edge; it was probably thinner toward the center, still I do not know about that.

Mr. PEPPER. They have asked for another specific instance of criticism, if you can give another.

Senator FLINT. I have asked you to give me another specific instance.

Mr. DAVIS. Oh, I remember on one occasion riding with him through the Deer Flat reservoir; we were discussing the fact that the reservoir was not very tight; there was a good deal of seepage; it was not yet in use and there had not been very much water put in, but it leaked. There was no indication that could be detected beforehand, because we had sunk test pits for that purpose; it is rather open; it is not

sandy; it is gravel and clay. But a good deal of the water escaped and one means we were adopting to tend to remove that was, as the water rose in the reservoir, we had men patrolling the edge, and filling and puddling all the badger holes and other holes from the surface, with the idea that the water could thereby, to some extent, be excluded from the subsoil, which would probably hold and tighten it. He ordered us to quit that; said it was a waste of money to spend it on that reservoir, implying that the reservoir was a total failure. I did not think it was; but of course, he was entitled to his opinion.

Mr. OLMSTED. Did he mean it was a failure or that it was not necessary to have one at that point?

Mr. DAVIS. I do not think that he had any idea that it was unnecessary to have one at that point. There was plenty of land to irrigate from it.

Senator SUTHERLAND. Mr. Davis, you are carrying on altogether something like twenty-seven different projects?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. And the expenditure of money runs up into many millions of dollars?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Thirty or forty or fifty millions of dollars?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. You would not undertake to say yourself, I take it, that there had not been some mistakes in the execution of your plans?

Mr. DAVIS. There have been.

Senator SUTHERLAND. And you would not regard it as evincing an unfriendly disposition toward the service itself if mistakes were pointed out?

Mr. DAVIS. Not at all.

Senator SUTHERLAND. I presume that on this trip of the committee there were occasional criticisms by members of the committee about details, were there not?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. And yet the committee as a whole were very well disposed toward the service as a whole, were they not?

Mr. DAVIS. I hope so; I do not know, Senator.

Senator SUTHERLAND. Well, they seemed to be, did they not?

Mr. DAVIS. Well, I have my doubts about that. I will tell you better when I see their report. I am very glad to hear you say so, as you are a member of the committee.

Senator FLINT. Everyone that talked on that trip, and that is everyone of the party, gave a certificate of character to the Reclamation Service at public meetings?

Mr. DAVIS. While you were along; yes, sir.

Senator FLINT. They did not stop after I left, did they?

Mr. DAVIS. Yes, sir. I thought there was a change in the attitude of the committee after you left. However, I do not want to take the position of commenting upon the sentiments of the members of the committee. I am not inclined to criticise or in any way comment upon it.

Senator SUTHERLAND. Do you think that Senator Flint overawed the committee while he was present?

Mr. DAVIS. No, sir.

Mr. JAMES. He merely enthused them.

Senator FLINT. I was asking in all seriousness if during that trip, while I was with the party in the West, there was anything said that I heard in any public address, and we had meetings two or three times a day with the settlers, whether there was anything in the way of criticism of the Reclamation Service by any member of the committee, including the Secretary of the Interior.

Mr. DAVIS. I think that is true.

Senator FLINT. The committee endeavored, as far as possible, to ascertain from the people of the various localities whether they had any complaints to make against the Reclamation Service, and, as a matter of fact, there were no complaints made, except of a trivial character, during the whole trip so far as I could see—isn't that a fact?

Mr. DAVIS. You mean by the settlers?

Senator FLINT. Yes.

Mr. DAVIS. Well, I would not suppose so. I thought they made some very serious complaints, but they were not very well founded.

Senator SUTHERLAND. That was after Senator Flint left the party?

Mr. DAVIS. Yes; I thought there was a change for the worse after he left it.

Mr. OLMSTED. Senator Flint is a pretty good man to have on the committee, is he not?

Mr. DAVIS. Senator Flint is an excellent man, and so are all the other members of the committee.

Mr. GRAHAM. When you speak of the Secretary making criticisms during that trip, do you mean criticisms as to the manner in which the projects were carried out or as to the general subject of reclamation?

Mr. DAVIS. I think perhaps the first expression you made would fit the case. There was a criticism, for instance, of the scheme of allowing the settlers to do a portion of their work and issuing certificates. There was a criticism of some other matters.

I am answering these questions only because I am asked; I am not volunteering any criticism of the Secretary or casting any reflection upon him whatever.

Mr. GRAHAM. My purpose is to get at the true situation, as you see it. Now, I understood you, the general effect of what you have stated to be, that the Secretary's position in his public addresses was not consistent—in fact, was inconsistent—with his position and expressions in his private talk. Am I right in that understanding?

Mr. DAVIS. I do not think so; no, sir. I didn't say that. I didn't mean that.

Mr. GRAHAM. I want to get you to explain that.

Mr. DAVIS. The idea I intended to convey regarding his attitude is, that I inferred from his talk—and by the way this is all inference, gentlemen, and perhaps improper—

The CHAIRMAN. It is in order. It has been the style before this committee right along.

Mr. DAVIS. The Secretary came into his office, as I believe, fully convinced that there were radical wrongs in the Reclamation Service to be remedied; he was very deeply of that opinion or he would not have said and done what he did, and I think his ideas gradually

changed to a certain extent—that while he did not approve of all that had been done by any means and does not yet, probably, his opinion on the work done, I believe, has bettered.

Senator FLETCHER. Did he give any expression in your presence of his attitude toward the Forestry Service?

Mr. DAVIS. I think not, specifically.

Senator FLETCHER. How about coal lands?

Mr. DAVIS. Coal lands?

Senator FLETCHER. Coal lands in Alaska?

Mr. DAVIS. No; I never heard him discuss that subject at all.

Mr. PEPPER. Mr. Davis, I had questioned you about certain things that happened in the early part of April—April 7 and April 8. I will ask you to look again at page 1171 of the testimony and tell me whether you there find a letter to Congressman Pray, under date of April 10, relating to a previous communication of Mr. Pray's on the subject of the Missouri River tributaries withdrawals.

Mr. DAVIS. Yes, sir.

Mr. PEPPER. And does it appear from page 561 of the Senate document, that on the same day, April 10, the restoration was made?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Noting that part of the letter to Mr. Pray which refers to recent investigations, or language to that effect, and the appearance that the withdrawal was no longer necessary, is your comment upon that similar to what you have said in regard to other letters containing the same phraseology?

Mr. DAVIS. It is.

Senator SUTHERLAND. What is that comment?

Mr. DAVIS. That is that I know of no such investigations such as are referred to here—recent investigations.

Senator SUTHERLAND. Is that on one of the printed forms?

Mr. PEPPER. No, sir; this is the Secretary's letter to Mr. Pray.

Mr. DAVIS. This does not refer to recent investigations, either. I will take that back. But it says that the withdrawal appears to be no longer necessary in the interests of the United States.

Senator SUTHERLAND. That is the letter to Congressman Pray?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. And not the order of withdrawal?

Mr. DAVIS. No, sir.

Senator SUTHERLAND. Well, the order of restoration is printed in that language, is it not?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. That is the regular form of expression?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. And when you say, Mr. Davis, that it is the regular form of expression, do you mean that it is the regular form of expression which has been used in cases where the Reclamation Service has really initiated the recommendation of restorations?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. When did it become the regular language of expression when the Reclamation Service took no initiative in the matter but acted under orders from the Secretary?

Mr. DAVIS. Until this rewithdrawal business came up the Reclamation Service always took the initiative.

Mr. PEPPER. Now, on page 86 of Senate document it appears that the last of these restorations was made on April 16; that was the final restoration of the Yellowstone withdrawals?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. At that time, Mr. Davis, were you expected to go head with the work of preparing the lists for restoration?

Mr. DAVIS. April 16?

Mr. PEPPER. Yes.

Mr. DAVIS. Yes, sir.

Mr. PEPPER. In other words, at that time there were still standing large areas that had been withdrawn?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. And which were being studied?

Mr. DAVIS. Well, we had not begun the field investigation. There were additional areas that had not yet been restored, which under the orders, as we then understood them, would be very soon submitted for restoration; they were withdrawn on exactly the same theory as all the rest—a broad strip down along the river.

Mr. PEPPER. And you proceeded to make those restoration orders in the usual way?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Now, I want to direct your attention to page 1189 of the testimony, which contains a portion of the President's letter to Secretary Ballinger, dated September 13, 1909. [At the] bottom of the page there is a paragraph which reads thus:

Soon after you became Secretary of the Interior you brought this order to my attention and said that it included a great deal of land that had no water-power sites on it, running back many miles from the river, and that it included much land which ought to be open to public settlement. That you had applied to the Reclamation Bureau to know whether it was desired for reclamation purposes, and what their recommendation was in the premises, and that they recommended that it be returned to the public domain.

Up to that time, Mr. Davis, and by that time I mean the date of the last restoration, namely, April 16, up to that date, whence had Mr. Ballinger, so far as you are advised, derived his information respecting the withdrawals, and what was covered by them—from your service, or from the Geological Survey?

Mr. DAVIS. From the Reclamation Service.

Mr. PEPPER. It was shortly after this, was it not, that in your presence the matter was first taken up between the Secretary and the Geological Survey?

Mr. DAVIS. On the 23d of April.

Mr. PEPPER. I call your attention particularly to this language:

That you had applied to the Reclamation Bureau to know whether it was desired for reclamation purposes, and what their recommendation was in the premises, and that they recommended that it be returned to the public domain.

Had there been any recommendation to that effect excepting as you describe here?

Mr. DAVIS. Only excepting as I have described?

Mr. PEPPER. Yes. And is it or is it not a fact that the restorations up to and including April 16 had been made upon the initiative of the Secretary and by his order?

Mr. DAVIS. It is.

Mr. PEPPER. Were any of those restorations based upon your initiative?

Mr. DAVIS. There was a restoration or two made in March, made in the regular order, that were initiated by the Reclamation Service, but they were small.

Mr. PEPPER. And you are referring to the restorations of March 6 and March 20 and March 27?

Mr. DAVIS. I believe those are about the dates.

Mr. PEPPER. Excepting those, and referring to the restorations contained in the two tables on page 86, is the fact as I have stated it?

Mr. DAVIS. The restorations listed on page 86 were made on the initiative of the Secretary.

Mr. PEPPER. And by his direction?

Mr. DAVIS. By his direction; yes, sir.

Mr. PEPPER. And had the Director of the Reclamation Service in fact protested against the making of them in your presence?

Mr. DAVIS. He had.

Mr. PEPPER. To the Secretary?

Mr. DAVIS. He had; and urged that the policy be to immediately begin field examinations and restore only such parts as were not necessary to conserve the power interests. And the Reclamation Service had also submitted to the Secretary a brief on the question of the legality, setting forth its views.

Senator SUTHERLAND. Does your answer apply to the case of the restoration of that land on the Green River at all were not both those recommended by the Reclamation Service?

Mr. DAVIS. I think probably those are the ones that Mr. Pepper has just spoken of. There were three recommended by the Reclamation Service, but most of them were small.

Mr. PEPPER. I think you will find the March 20 restoration was on the recommendation of the Reclamation Service, and then the one in April.

Senator SUTHERLAND. Do I understand you that both of those were made on the recommendation of the Reclamation Service?

Mr. DAVIS. Which do you refer to?

Senator SUTHERLAND. The Green River, Utah, restoration.

Mr. DAVIS. The restoration of March 20 and April 15?

Senator SUTHERLAND. Yes, sir.

Mr. DAVIS. I can not remember. I think the one on March 20 was on the recommendation of the Reclamation Service, and the one on April 15 in obedience to the Secretary's order.

Senator SUTHERLAND. That is your recollection about it?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Do you feel quite clear about that?

Mr. DAVIS. Yes, sir; I do, because as I remember it—of course it is not an easy matter to remember dates, but as I remember it the first one that was sent in in accordance with the Secretary's direction to me was at a latter date, March 20.

Senator SUTHERLAND. Let me see if I can refresh your memory. Do you recall prior to the restoration of March 20 a delegation of settlers, or one or two people representing the settlers, who came here and asked for that restoration?

Mr. DAVIS. No, sir. Do you know what date that was?

Senator SUTHERLAND. Well, it was prior to this date of March 20.

Mr. DAVIS. I did not return from Porto Rico—I did not appear at the office, at least—I think I returned from New York the morning of the 17th, and very probably that meeting you speak of with the delegation of settlers was held prior to that time. At any rate I don't remember it; I do not think I saw them.

Senator SUTHERLAND. You do not know whether they went directly to the Director of the Reclamation Service?

Mr. DAVIS. No, sir.

Senator SUTHERLAND. Then another delegation of citizens, or settlers, came down at a later date and asked for the restoration of still other lands. Do you recall that?

Mr. DAVIS. I do not recall that. It might be, however, that I have forgotten it,

Mr. PEPPER. Mr. Davis, in that paragraph of the President's letter, at page 1189, in which the President summarizes what he says Mr. Ballinger told him, there appear to be certain statements, advanced as reasons, certain statements which are as follows:

You brought this order to my attention and stated that it included a great deal of land that had no water-power sites on it, running back many miles from the river, and that it included much land which ought to be opened to public settlement.

I am not asking you now as to the sufficiency or insufficiency of those reasons, but in point of fact had any or all of those reasons been advanced by the Secretary of the Interior to you, or in your hearing to anybody, up to and including the date of the last restoration?

Mr. DAVIS. They had not. The only reason that Secretary Ballinger ever gave me for the restoration was the illegality of the withdrawals; that was the reason he gave Mr. Newell in my presence.

Mr. PEPPER. I direct your attention to the last clause of the paragraph cited:

That you had applied to the Reclamation Bureau to know whether it was desired for reclamation purposes, and what their recommendation was in the premises, and that they recommended that it be returned to the public domain.

Is that statement substantially accurate or inaccurate?

Mr. DAVIS. I think, technically, it is true. The Secretary certainly discussed the matter and I explained to him the purpose of the withdrawal, being the conservation of power sites, which of course amounted in a general way to asking whether it was needed for reclamation purposes. He certainly learned from me the purpose of the withdrawal, which would make that inquiry accurate. But I do not recall prior to the restorations that he ever asked my advice on the subject—possibly he did—but at any rate, I remember saying in reply to his statement that the withdrawals were illegal; I remember saying in that case that the only thing to do was to restore them.

Mr. PEPPER. Do you, Mr. Davis, recall whether or not he applied to the Reclamation Bureau prior to the last restoration "to know whether it was desired for reclamation purposes, and what their recommendation was in the premises, and that they recommended that it be returned to the public domain?"

Mr. DAVIS. Well, as I have stated, each one of those statements is technically true.

Mr. PEPPER. That is the reason I ask the question whether it was substantially true.

Mr. DAVIS. The meaning I gather from it it is not true.

Mr. PEPPER. That meaning is what?

Mr. DAVIS. That meaning is that the purpose or the reason, or the initial reason, for the restoration was the fact that the withdrawals were too broad and were roughly and crudely made.

Mr. PEPPER. And then they were recommended by the Reclamation Service?

Mr. DAVIS. Recommended by the Reclamation Service. I did not understand that to be the reason. That was not the reason that I thought was actuating the Secretary at the time, but perhaps he knows better what reason was actuating him than I do.

Mr. JAMES. The reason given here is that the Reclamation Bureau reported the land as not needed for reclamation purpose. Is that not what you construe the language to mean by a fair construction?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Well, is that a fact?

Mr. DAVIS. That is a fact. That is modified in this way: There are certain of these withdrawals made under the provisions of the reclamation act with a clear view that they were necessary for reclamation purposes, but they were not in the sense that they would have been initiated for that purpose only by the Reclamation Service. We had a discussion on that point, on the process of returning these, and I myself brought the matter to the attention of the Secretary that a portion of these withdrawn power sites were applicable to reclamation purposes and had been withdrawn with that in view, and that I thought that they could be legally held under that law. We were talking the matter over with Mr. Lawler, who was Assistant Attorney-General, and he said if the primary purpose was the conservation of power they were illegal, but if the primary purpose was reclamation pure and simple they were legal; and then, I having explained the situation to the Secretary and asked him where we could draw the line, in talking the matter over, as I remember it, the conclusion was about like this: That all the withdrawals that had been made on the initiative of Secretary Garfield, whether to conserve the power or whether for reclamation purposes or otherwise, and that would not otherwise have been made in connection with the reclamation projects, should be restored because they were considered illegal. The fact as to whether or not these withdrawals that were made under the provisions of the reclamation law were needed for reclamation purposes is simply a question of how far you will look into the future.

Now, that is not an easy line to draw; we have and still hold a large number of power withdrawals in the Deschutes and the John Day rivers, and various other places; these withdrawals that are made primarily for preventing the passage of power privileges out of the hands of the United States, and they were made before Secretary Garfield made his order to go further, which was simply an extension of the same kind. But the withdrawal of the Deschutes River and the withdrawal of the John Day River and many others will stand, although they are of the same nature as some of those that have been restored. It is a question of drawing the line as to how far you will look into the future, and the reclamation law sheds no light on that. It simply authorizes the Secretary to withdraw and hold until he needs it public land which can be used for reclamation

purposes, and I have described the rule under which the land was withdrawn.

Mr. JAMES. So the truth is, as you stated it to the committee, that these lands were restored to public entry again, not because the Reclamation Bureau thought they were not needed for reclamation purposes, but because Secretary Ballinger thought that Secretary Garfield's withdrawal was without authority of law?

Mr. DAVIS. That is as I understood it; yes, sir.

Senator FLINT. But as a matter of fact the Reclamation Service did not recommend these lands to be returned to the public domain except and only as they were directed to do so by the Secretary?

Mr. DAVIS. That is a fact.

Mr. JAMES. So then, to have been more accurate, this ought to have stated that the land was really restored because of the violation of the law by the former administration in withdrawing it?

Mr. DAVIS. Yes, sir; that was what Secretary Ballinger said to me.

Mr. PEPPER. Mr. Davis, do you recall any interview that you had with Secretary Ballinger on or about April 23?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Will you be kind enough to state what happened on that date?

Mr. DAVIS. I was in the Secretary's office on the 23d—I believe he sent for me—I was visiting the office nearly every day on business, about that time—and he had drafted this letter which I believe had been signed and addressed to the Director of the Reclamation Service which he read to me. He said that he had taken this matter up with the President and that they had decided on a certain course of action. This letter directed the Reclamation Service to detail an engineer, or engineers, to examine the rivers of the West with regard to their capability for developing power and to determine what lands were necessary for that purpose and report them to the department with the view to withdrawing them from entry. That is the substance of the letter; I can not remember the words; in fact, I never read the letter; he read it to me.

Mr. PEPPER. Was the phraseology of the letter substantially the same as the one I show you bearing the same date addressed to the Director of the Geological Survey?

Mr. DAVIS. Yes, sir. I think this letter—this letter is addressed to George Otis Smith, Director of the Geological Survey, and contains some changes from the one he read to me.

Mr. PEPPER. Well, now, you have given us a brief statement of what the Secretary said when he first came in bringing a letter, which was substantially like this, claiming that it was addressed to whom?

Mr. DAVIS. The Reclamation Service.

Mr. PEPPER. And what conversation thereupon took place between you and the Secretary?

Mr. DAVIS. After reading the letter, he wanted to know if we had some one that we could put on that immediately, and I said I thought we could find some one, and he said, well, he wanted it pushed, wanted it done immediately. I asked him about funds, where we should get the money to pay for this work, and he asked me if we couldn't take it from some existing allotments which were then being used, and I told him we could if he so ordered. Then I asked what method of

bookkeeping should be connected with it. I explained to him that it had been the policy of the Reclamation Service in its expenditures to charge such expenditures to specific projects with a view to keeping account of the projects, so that the money could be returned to the reclamation fund in accordance with the provisions of the reclamation act. I simply stated that that had been the policy and asked for instructions on that point. He said it was a rather difficult matter to determine; we discussed it a little more, and he rather coincided with the view that the law, at least the spirit of it, required such bookkeeping. And apparently neither of us saw any way out.

I never questioned the legality or propriety of the act at all; simply asked for instructions. Then he asked me if I had any suggestions to make, and I said yes, I had; that I believed the Geological Survey—I knew the Geological Survey had appropriations for hydrography and topography, that the investigations of power sites in the West were essentially hydrographical and topographical questions, with engineering features, of course; but I thought likely these appropriations could be used for that purpose, and in fact knew that they had been used for that purpose in the East. He agreed with that view, and I brought out the fact also that the law—the organic act of the Geological Survey—had charged the Director of the Geological Survey with the duty of classifying public lands, and that also seemed to be in accordance with the provisions of the law. He said the suggestion was a good one, and he told Mr. Carr, his private secretary, to telephone G. O. Smith, Director of the Geological Survey, to come over to his office, and asked me to wait. So while I waited, I went out into the anteroom, and—Smith had just left the Secretary's office a short time before that, he said, and they were not quickly obtainable, I waited half an hour or such a matter—finally Smith came in, and it was then, it was after ordinary office hours, I think it was in the neighborhood of 5 o'clock; then when he came in we went into the Secretary's office, and in my presence the Secretary brought this matter to the attention of Director Smith.

MR. PEPPER. When you say this matter, you mean the necessity for obtaining data for making rewithdrawals—is that right, or what do you mean?

MR. DAVIS. The matter of the necessity of making examinations in the field of power. You have stated this correctly. Mr. Smith then, in a jocular manner, said that he had made plans, had plans ready to submit to the Secretary, regarding the disposition of funds for hydrographical and topographical work for the coming season, which was just about to open, and stated that this would require a radical revision of his plans; so the matter was talked over, the letter was revised, and they asked me for suggestions, and I stated the process of work of examining these power sites was an extensive one and would take time and money, so that it ought to be gone at judiciously and the most important investigated first. I suggested that they be confined to investigations of the power sites outside of the forest reserves, because in the national forests there was a control through the existence of that reserve, and that led to the incorporation in this letter of the remarks which exclude the forest reserve from the instructions to the Geological Survey, and the phraseology was changed in some other respects to make it conform to the new use of the letter, which was rewritten. And that letter I presume, which

was addressed to the Director of the Geological Survey, and I presume, I don't know whether it was delivered to him that evening or not, but I presume so.

Mr. PEPPER. And the letter rewritten, addressed to the Director of the Geological Survey, is the letter which I handed you a few moments since and hand you again.

Mr. DAVIS. It had the same purport, and I presume it is the same thing.

Mr. PEPPER. I call your attention to the fact in the body of the letter there is a reference to your service, and that is a persistence of the word that was in the original draft when it was intended to be sent to the Reclamation Service.

Mr. DAVIS. I suppose so. The Reclamation Service is called "service" and the Geological Survey is called the "survey" ordinarily, but Secretary Ballinger being not familiar with the terminology probably at that time—I do not know about that.

Mr. PEPPER. At all events, the letter was written in the way you have described, after that conversation?

Mr. DAVIS. Yes, sir. In connection with that, Secretary Ballinger stated to Director Smith that this was a large, important, and extensive work, and he would have to rely largely upon the Reclamation Service for the information that was now available, and directed me to render such assistance as I could to the Director of the Reclamation Service.

The CHAIRMAN. Geological Survey, you mean?

Mr. DAVIS. Yes; to the Director of the Geological Survey. I had a conference after that with Mr. Smith and Mr. Layton, who had that matter in charge.

Mr. PEPPER. Was a reference made, when Mr. Smith came in during that particular interview, to the conversation between Mr. Ballinger and the President?

Mr. DAVIS. I do not recall about that. He began his conversation with me by stating that he had taken the matter up with the President, but I do not remember whether he said that in Smith's presence or not.

Mr. PEPPER. Was there anything that he stated which contained any reference to the conference on this subject that had occurred two or three days before between the President and Mr. Pinchot?

Mr. DAVIS. There was no reference to that; no, sir.

Mr. PEPPER. Well, now, when the letter had been readdressed and delivered to Mr. Smith there, did you, either at that interview or at a subsequent interview, call Mr. Ballinger's attention to the fact that there were still large areas of land standing under the Garfield withdrawals?

Mr. DAVIS. Yes, sir. I don't think I stated anything about them being very large. I stated there was a number of power-site withdrawals which he had directed me to submit for restoration, and asked what I should do with regard to that.

Mr. PEPPER. What did he say?

Mr. DAVIS. Not to make any more restorations; to stop.

Mr. PEPPER. Will you look at the map opposite page 86 of the Senate document, which shows the course of the White River at certain places, and, down in the lower left-hand corner, will you read

the legend respecting the reasons for not restoring the certain areas therein indicated?

Mr. DAVIS (reading):

Areas included in withdrawal made February 27, 1909, on recommendation of Director of Reclamation Service, and not restored, since Director of Reclamation Service did not so recommend.

Mr. PEPPER. Do you understand whether that, in point of fact, was the real reason why that land was not restored?

Mr. DAVIS. In one sense it was. In obedience to Secretary Ballinger's directions we sent in recommendations for certain restorations, prior to this time, and if this had been one of them I presume it would have been restored; but it was not one of them. This was one of them which remained unrestored up to the date of February 23, to which I referred in asking for instructions.

Mr. PEPPER. You mean April 23?

Mr. DAVIS. April 23—what did I say?

Mr. PEPPER. February, I think you said.

Mr. DAVIS. April 23.

Mr. PEPPER. And so it remained unrestored on April 23. That was, as you suggested, true, that it was not thereafter restored because you failed to recommend it for restoration—why did you not recommend it for restoration?

Mr. DAVIS. Because he told me not to.

Senator SUTHERLAND. Before you pass from that, do you know who put that memorandum there?

Mr. DAVIS. I do not.

Senator SUTHERLAND. Is that the personal memorandum of the Secretary of the Interior?

Mr. DAVIS. I do not know; it may be. I do not know.

Senator SUTHERLAND. You have no means of knowing?

Mr. DAVIS. I have no means of knowing. I presume that that was prepared by the Geological Survey; but then that is only a guess.

Senator SUTHERLAND. It is not at all likely, is it, that a map of that sort would have the personal memorandum of the Secretary of the Interior upon it?

Mr. DAVIS. I think undoubtedly it was in accordance with his wishes, or it would not have been submitted to the President.

Senator SUTHERLAND. The memorandum was gotten up by some other officer, was it not? He doesn't look after those matters personally, does he?

Mr. DAVIS. It gives a reason there for the restoration. The Director of the Geological Survey had not been conversant with these matters until the 23d of April. That I know from general information, because he had not been present at any of the conferences, and he has since told me that he knew nothing about it previous to that time. So that that referring to the reason why it had not been restored would not be within the knowledge of the Director of the Geological Survey, so I presume it is in accordance with the Secretary's wish that it is on there.

Mr. PEPPER. In point of fact, that map is one of two maps that was submitted to the President at a subsequent date by Mr. Ballinger, was it not?

Mr. DAVIS. It so appears in the record; I have no other evidence.

Senator SUTHERLAND. Let me ask you if you propose to show that this order was made by the Secretary of the Interior or directed to be made by him.

Mr. PEPPER. Not at all; I simply wanted to call attention to the fact that in this map, subsequently submitted to the President, there is the continuing implication that these restorations were made on the initiative on recommendation of the Reclamation Service. That is all.

Senator SUTHERLAND. I understood that there was quite another purpose in it, and I wanted to know if you wanted to connect it with the Secretary of the Interior.

Mr. PEPPER. No, sir; not at all, excepting as the documents themselves suggest such an influence.

Mr. JAMES. Who submitted this map with that legend on it to the President?

Mr. PEPPER. I speak subject to correction from the record, but my personal recollection is that that map and the companion map with it relating to the Owyhee River were appended as exhibits to a letter of George Otis Smith, Director of the Geological Survey, by Mr. Ballinger, which was covered by Mr. Ballinger in his letter to the President. Am I substantially correct in that?

Mr. JAMES. Was the letter then submitted by Secretary Ballinger to President Taft?

Mr. PEPPER. Yes, sir; that is correct.

Mr. JAMES. And the map accompanied that letter?

Mr. PEPPER. The map accompanied the letter, and I think upon reference to the record it will appear that those two maps are referred to as being typical illustrations, or language to that effect. It appears on page 85 of the Senate document: "I send also two maps illustrating typical examples of the character and nature of these blanket withdrawals." That is the language of George Otis Smith in the letter of September 3, 1909, to the Secretary of the Interior, and that letter with these two maps, is covered by Mr. Ballinger to the President in his letter dealing with the Glavis charges.

Mr. JAMES. It was then sent by the President to the Senate when the records were called for.

Mr. PEPPER. Yes, sir; that is the way in which it finds its way into Senate Document 248.

Mr. GRAHAM. In that document it is only one of Secretary Ballinger's statements, or one of the statements occurring on page 89, this being between pages 86 and 87. On page 89 appears the Secretary's signature—"I have the honor to remain, yours, very respectfully, R. A. Ballinger, Secretary," and in the left-hand corner of it, "The President, Beverly, Mass."

Mr. PEPPER. Yes, sir; that is correct.

Senator FLETCHER. You were about to pass away from the letter of the Secretary to George Otis Smith. Have you introduced that letter?

Mr. PEPPER. That letter is in the document already—no, I beg your pardon. That is the other letter in the Senate document, but perhaps for convenience it had better be put into the notes at this point, and I will offer it in evidence.

The CHAIRMAN. If there is no objection, it will be admitted.

(The letter is as follows:)

UNITED STATES GEOLOGICAL SURVEY,
OFFICE OF THE DIRECTOR,
Washington, September 3, 1909.

The SECRETARY OF THE INTERIOR.

SIR: In accordance with your request, I have the honor to submit herewith a statement of the methods followed by the Geological Survey, in its power-site investigations, together with tables comparing the former withdrawals with those made under your administration.

On April 23, 1909, you ordered the immediate investigation of water-power sites on the public domain by the Geological Survey, and instructed me to report the available power sites in order that any necessary withdrawals might be made to protect such power sites, pending "the securing at the next session of Congress legislation to control and regulate their disposition."

The Geological Survey thereupon began a critical review of the official records of stream gradients and stream flow, covering not only streams previously withdrawn but all streams in public-land States.

Where streams were found to possess conditions favorable for power development, the following procedure was had:

I. The location of the stream according to legal subdivisions was obtained by copying the official Land Office plats.

II. With these plats in hand lists were prepared covering the land along the river which should be withdrawn if available. In the preparation of these lists and of the official recommendations of withdrawal the size of the unit of withdrawal was determined in no small measure by the character of the land surveys. Where these surveys resulted in a careful meander of the streams it was possible to make the segregation follow the river very closely. Where the survey did not result in a careful meander of the stream it has been necessary to withdraw larger tracts in order to cover all possible positions of the river.

III. These lists were thereupon transmitted to the General Land Office for indication of the status of the land.

IV. On receipt of the status plats, lists of lands to be withdrawn were prepared, having due regard to the ownership of the land and the character of development required for the utilization of the power in the particular stream or river involved, the tracts segregated providing not only for possible dam sites but also for flowage areas and all rights of way that might be essential to power development. These lists were transmitted to the Secretary, with a recommendation that the following action be taken:

"In aid of proposed legislation affecting the disposal of the water-power sites on the public domain, all public lands in the following list are temporarily withdrawn from all forms of entry, selection, disposal, settlement, or location, and all existing claims, filings, and entries are temporarily suspended. All valid entries heretofore made may proceed up to and including the submission of final proof, but no purchase money will be received or final certificates of entry issued until further orders."

V. Following the withdrawal the survey sends into the field experts to make careful topographic and hydrologic surveys, including additional stream profiles and measurements of stream flow, and on this basis reviews the withdrawals made and recommends the restoration of tracts not essential to power development. As a result of such special examinations three restorations of areas, in no wise essential to the control of power development, have already been made and the existence of valuable power sites undoubtedly in the possession of the Government has been conclusively demonstrated.

All the withdrawals will be specially examined in the field before Congress convenes. The work now in progress is summarized below according to States:

Colorado:

Animas River and tributaries.
Green River and tributaries.
Grand River.
North Fork Gunnison River (profile party).
Gunnison River and tributaries (profile party).
White River.
Blue River.
Cochetopa Creek.

Idaho:

Salmon River and tributaries.
Snake River.
Payette River.
Kootenai River.
Salmon River No. 2.

Montana:

Missouri River (one restoration made).
Missouri River tributaries (Jefferson, Gallatin, and Madison rivers—two restorations made).
Flathead River.
North Fork Musselshell River.
Boulder River.
Beaverhead River.
Flathead River No. 2.
Whitetail Creek.
Yellowstone River.
Clark Fork and tributaries.
Kootenai River.
Judith River No. 1 (profile party).
Hell Gate River.
Judith River No. 2.

Oregon:

Owyhee River and tributaries.
John Day River (profile party).
Deschutes River (profile party).
Engineer is now in the field making topographic and hydrographic surveys, including profiles of the following streams, which will be withdrawn if conditions warrant within month:
White River.
Metoulius River.
Crooked River.
East and West Forks of Deschutes River.
John Day River, including North, Middle, and South Forks of.

Utah:

Duchesne River and tributaries.
Ashley Creek and tributaries.
Grand River.
Ashley Creek No. 2.
Colorado River.
White River.
Green River (profile party).

Washington:

Yakima River.
Engineer is now in the field making topographic and hydrographic surveys, including profiles, of the following streams, which will be withdrawn if conditions warrant:
Klickitat River.
White Salmon River.
Cowlitz River.
Lewis River, including North Fork, South Fork, Swift Creek, and Pine Creek.
Muddy River.
Cispus River.
Toutle River, including North and South Forks.
Green River.
Naches River.
Tieton River.

Wyoming:

North Platte River.
Green River and tributaries (profile party).
Wind River and tributaries.
Greybull River.
Owl Creek.
Clarks Fork of Yellowstone River.
Green River and tributaries, No. 2 (profile party).

The streams along which existing power-site withdrawals are in force, together with the comparative areas of these and the former blanket withdrawals, are shown in the accompanying four tables.

I send also two maps illustrating typical examples of the character and nature of these blanket withdrawals.

The Owyhee withdrawal was made on January 18, 1909, on the following recommendation of the Director of the Reclamation Service:

"In accordance with your request to be advised of any power sites which may be regarded as of importance with a view to the conservation of the water resources, it is respectfully recommended that under the supervisory power of the Secretary the following-described lands be reserved from all forms of entry in order that they may be held available for the benefit of the public in connection with future development."

The map on which a portion of this withdrawal is shown (Map No. I) was available for use in making the original withdrawal, inasmuch as the survey was made by the Geological Survey in 1905 in partial cooperation with the Reclamation Service, as shown in the legend, and the work was published in 1906. This map shows:

(1) That in the lower portion of the river there was included in the blanket withdrawal a wide valley in Tps. 20 and 21 S., R. 46 E., under irrigation and of no possible value for power purposes.

(2) That the great bulk of that withdrawal included very hilly uplands remote from the river and in some cases in other drainage basins.

(3) That the original withdrawal, while needlessly removing a vast territory from settlement, included in this particular area only 26½ miles of the total 36 miles of the river which is possibly valuable for power. This stretch is most important for power purposes.

This map explains why the 60,000-acre withdrawal made under your direction actually conserves more for the public interest than the 380,000 acres included in the original blanket withdrawal.

Map No. II shows a similar condition with respect to the withdrawal along the White River in Utah. On this map the location of the river is plotted according to the official land subdivision surveys of the General Land Office. These surveys were all made prior to 1905, but in the recommendation of withdrawal which was made February 27, 1909, in the same terms quoted above for the Owyhee, all the townships except two are described as "unsurveyed."

This withdrawal, as is true of the Owyhee and other withdrawals, although including large tracts of no possible value for power sites, failed to include important portions of the river. The portions of the river of possible value for power which were not included in this original withdrawal, which is still in force, were withdrawn on August 20, 1909. Under your instructions I am now reviewing the original withdrawal and will in a short time recommend the restoration to entry of a very considerable portion of the area which is of no value for power purposes.

Both of these maps illustrate instances where there was a failure to utilize the records in other bureaus of the department which the Reclamation Service was in the habit of constantly consulting. In many cases there is internal evidence that the lists for the original withdrawals were compiled wholly from small-scale Land Office state maps, and these of not the latest issue.

Very respectfully,

GEO. OTIS SMITH, *Director*.

MR. PEPPER. Mr. Davis, while we are referring to that letter of George Otis Smith, which appears on page 83 and subsequent pages of the Senate document, are you able to state, either independently of it or refreshing your recollection by the letter, whether the withdrawals which began to be made shortly after April 23 were or were not based upon new field examinations?

MR. DAVIS. What are the dates of the withdrawals that you refer to?

MR. PEPPER. My impression is that the first rewithdrawal was under date of May 4. That is the first one of which there is any record in the Senate document.

MR. DAVIS. No, sir; they were not based on the field examination. They had not had time for field examination between April 23 and May, hardly; I do not suppose they would even send anyone to the field up to that time. But I know this, that I saw Mr. George Otis Smith and Mr. Leighton from day to day; we generally took lunch at

the same place and we had more or less discussion regarding these matters; and a few days after this letter of the 23d they told me that the Secretary had directed them to submit lists for rewithdrawals immediately. At the interview of April 23 he had, I think, in words, certainly by acts, implied that he regarded the field examination as accurate information necessary to make any rewithdrawals legal, and Leighton said that they had orders to make some restorations immediately.

Mr. PEPPER. Restorations?

Mr. DAVIS. Rewithdrawals, I mean, immediately, and he told me at the time that the Secretary was becoming very urgent in the matter; he wanted some sent immediately and he did not see anything in the world he could do but send back the same lists he had had before. He stated to me on the following day, the same; he seemed to feel that they were in rather an embarrassing position because those restorations had been recently made, and now to submit the same lists for rewithdrawals he seemed to think it an embarrassing thing, and he asked me to go to his office and talk it over, and we did, at some length, and discussed plans for field work. I made a number of suggestions in connection with it, and I think that not less than three times within the few weeks following the 23d of April, Leighton and Smith, one or both, made the statement to me that the Secretary was urging them to submit lists for withdrawal, and that they had no additional information and did not see any way that they could do it except resubmit the same lists; but I made a few suggestions, I think, of changes that might be made, and evidently they found a number of changes, because after that I was not called in conference any more, and these great changes of greatly narrowing width were done without any consultation on that point with me.

Senator FLINT. Did you meet them every day? Did you continue to meet them every day at lunch?

Mr. DAVIS. Yes, sir; I think so. I do not recall any exceptions to that.

Mr. MADISON. Were those withdrawals made as a result of the field examinations?

Mr. DAVIS. The early ones were not. They did put some parties in the field, and, I think, perhaps in August or September had a few results from this field examination. I can not state positively on this point, because I do not know when they began to get results from the field examination. There was somewhat of a change, it seemed to me, in the attitude of the Geological Survey to the Reclamation Service occurring early in May. Frequently before that they had discussions on this matter, and they quit, and we were not kept in touch with the work as it was done; but having stated a number of times that they had no additional information and did not see any difference that they could make in the list they should resubmit, led me to state later my conversation with Secretary Garfield that the difference between the new lists and the old ones was mainly due to the elimination of private lands, and I know that they had been eliminated, because Secretary Ballinger told me so in a subsequent interview, and I supposed, in accordance with the information I had from Smith and Leighton, that that was the main difference, and I told Secretary Garfield that that was my impression—in fact, I believe I expressed it as the fact. It was an impression, however.

Mr. PEPPER. Then when Secretary Garfield says that the main difference or the chief difference between the areas originally withdrawn and rewithdrawn were due to the inclusion of one case within the described area of entered land and its exclusion in the other he is stating what is exactly in accordance with the information given him by you?

Mr. DAVIS. In accordance with the statement given him by me. It might not have been accurate.

Mr. PEPPER. I mean the statement given him by you.

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Now, with regard to the way the Geological Survey went about it, I want you to look at the bottom of page 83 of the Senate document at the paragraph marked in Roman numeral V and see whether you do not find this statement there—the Director of the Geological Survey to the Secretary and then transmitted to the President:

Following the withdrawal the survey sends into the field experts to make careful topographic surveys and hydrologic surveys including additional stream profiles and measurements of stream flow, and on this basis reviews the withdrawals made and recommends the restoration of tracts not essential to power development. As a result of such special examinations three restorations of areas, in no wise essential to the control of power development, have already been made and the existence of valuable power sites undoubtedly in the possession of the Government has been conclusively demonstrated.

All the withdrawals will be specially examined in the field before Congress convenes.

What does that indicate as to whether or not the rewithdrawals had been made prior to the field examination?

Mr. DAVIS. It indicates that they had, there is no doubt of that, and it also indicates that the programme being followed by the Geological Survey is the same one outlined to the Secretary by Mr. Newell and myself as the programme outlined by Secretary Garfield, the exception being that the withdrawals made by the Geological Survey were not so broad as those made by the Reclamation Service.

Mr. MADISON. By reason of the elimination of private entries?

Mr. DAVIS. Except the elimination of some private lands, too. They withdrew a narrow strip along the river.

Mr. PEPPER. And of course it is a matter of opinion, purely, but as a matter of your opinion, which is more protective of the interests of the United States, the narrow withdrawal which has lately been the practice or the broad withdrawal followed by a paring down.

Mr. DAVIS. The broad withdrawal followed by a paring down certainly protects the power site better. I do not think there is any very serious difference, however, in that respect.

Senator FLINT. Let me ask you a question at this point. Has the action of Secretary Ballinger in restoring to entry land that had been withdrawn by Secretary Garfield resulted in any person acquiring any claim to land that could be utilized for power sites?

Mr. DAVIS. I can not answer that question.

Senator FLINT. You have no knowledge on the subject?

Mr. DAVIS. No, sir.

Mr. PEPPER. How could that knowledge be derived?

Mr. DAVIS. That knowledge could only be derived by the conjunction of two pieces of information that I do not believe anybody has; one is an accurate knowledge of the land required for those power sites exact, and the other is an accurate knowledge of whether or not any

entries have been made in the field land office. I do not know whether the field land office records have been examined by anyone—they have not been by me, I know that—and if they have, a statement that no such lands have passed out of the possession of the United States would not be conclusive to me, because the withdrawal made by the Geological Survey is too narrow to protect the power sites fully, and there may be entries outside of the strip that they considered necessary to protect the power sites. So that even though an honest man, under their rules, were examining those records, he might report, after infinite care, that no such entries had been made and it still would not be the fact.

Senator FLINT. Has the failure of Secretary Ballinger to withdraw lands valuable for power sites resulted in any person acquiring any claims to land valuable for power sites?

Mr. DAVIS. I do not know.

Senator FLINT. I am directing your attention now to the fact that you said, or that you testified, that you had in contemplation the further withdrawals of land.

Mr. DAVIS. On other streams?

Senator FLINT. On other streams.

Mr. DAVIS. Yes, sir.

Senator FLINT. Now, what I am directing your attention to—and I want to ask you this question—is, has the failure of Secretary Ballinger to withdraw the land valuable for power sites resulted in any person acquiring any claim to land valuable for a power site?

Mr. DAVIS. I do not know.

Senator FLINT. In other words, you have no knowledge whether any of those lands have been taken up in any way?

Mr. DAVIS. No, sir.

Senator FLINT. That you might have recommended to be withdrawn in the event you had carried out your plans?

Mr. DAVIS. No, sir; they have gone on with their withdrawals, however, on other streams that we have not undertaken to withdraw, and have done it diligently.

The CHAIRMAN. Mr. Davis proceeded to argue that it was impossible for anybody to get exact information on the subject.

Mr. PEPPER. Mr. Davis, may I—

Mr. OLMSTED. Mr. Pepper, will you allow me to ask a question at this point?

Mr. PEPPER. Certainly, Mr. Olmsted.

Mr. OLMSTED. In your letter of April 10, 1909, which is printed on page 187 of the list, and concerning which you testified yesterday, you speak of certain land having been withdrawn, and this is your language:

For the purpose of checking the acquisition of valuable power sites in the mountain regions of the West by syndicates, which were believed to be attempting to monopolize all the available power possibilities in certain regions.

Can you tell us what syndicates those were?

Mr. DAVIS. I can mention some of them; yes, sir. My first information on this point was acquired before the passage of the reclamation act. The movement to acquire power sites in certain regions began before that time, I think, or about that time.

Mr. OLMSTED. In what region was it?

I can not give you the name of the company owning the distributing system of San Francisco, but I know that large power developments have been made on Feather River and the power transmitted to Oakland, 140 miles away, by a company that does not distribute it, and they may sell to another company or sell to large manufacturers, and do, I know, sell to large manufacturers. Now, I can not give you accurate information on that point, but I think these statements are true.

Senator FLINT. As a matter of fact, has not one company acquired the distributing system in San Francisco, and practically had a monopoly of all northern California, all northern California practically being served by this one company?

Mr. DAVIS. You mean the bay counties?

Senator FLINT. Yes, sir.

Mr. DAVIS. That is a different company from the Great Western.

Senator FLINT. I know; but are not the Great Western and the bay counties practically in control of northern California?

Mr. DAVIS. I do not know about that; maybe they do; still I know they are very large companies and have very large development. I do not know how entirely they control the situation. I am not very familiar with the conditions in northern California, but I understand that a few companies have been diligently acquiring power sites and the operation is pretty well criticised.

Senator FLINT. As a matter of fact, the distributing systems are all controlled by one of these great companies.

Mr. DAVIS. I do not know as to that.

Senator FLINT. I say, is it a matter of fact that they are controlled by one or more of those great companies? Is it not very doubtful whether anyone else would go into the mountains and spend a large amount of money to develop that electricity?

Mr. DAVIS. I do not think so. There are, as I have said, other means of controlling power than controlling a distributing system in a city. There are the large manufacturers, and then there is usually a limit to the life of the franchise of a distributing company, and if some other company could get hold of the power possibilities in the mountains they could, at the end of that time, have the matter in competition; they could compete. I have understood that it has been the main purpose of those companies in acquiring such large power development possibilities to shut out such competition, not that they wanted to develop it themselves. It is away beyond the possibility of the near future for them.

Senator FLINT. I understood it just that way. Now, assuming that this condition existed, if one great company was formed and should have the entire distributing system in the municipalities of California, in your opinion, would another company go in there and attempt to compete with that company?

Mr. DAVIS. They would be greatly handicapped, of course. They would not put in another distributing system, but it is conceivable that they might sell to new traction lines and new manufacturers, as the Great Western Power Company is doing in northern California.

Senator FLINT. And, just following that along a little, supposing the Great Western Power Company and the bay counties should combine, then practically northern California would be in the possession of one company.

of 1901 which made them available for power purposes, and for that only.

Mr. MADISON. And the purpose of the change was not for the purpose of preventing monopoly so much as for the purpose of regulating the monopoly?

Mr. DAVIS. Yes, sir; preventing destructive monopoly, or oppressive monopoly.

Senator SUTHERLAND. Mr. Davis, I do not quite understand you about the situation in Utah. Did you say that one company practically monopolizes all the power which is there?

Mr. DAVIS. I do not know whether there is more than one company or not, but my understanding is that the favorable sites in the vicinity of the large markets in Utah are very largely in the hands of—there may be two companies, but I think, perhaps, they are very largely in private hands, however.

Senator SUTHERLAND. Are there not quite a number of other companies there?

Mr. DAVIS. I do not know as to that. You know that better than I do.

Senator SUTHERLAND. You have in mind, principally, the Telluride Power Company?

Mr. DAVIS. That is one that is developed more largely, and there is another at Bear Lake.

Senator SUTHERLAND. That is the large one—the Telluride Power Company?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Then there is the Utah Light and Power Company. Do you recognize that?

Mr. DAVIS. I have heard the name, but I did not know the extent of their holdings.

Senator SUTHERLAND. It is quite a large company?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Do you know of others in the Cottonwood Canyon, above Salt Lake—a separate company?

Mr. DAVIS. I am not acquainted with that company.

Senator SUTHERLAND. And another still, in Ogden?

Mr. DAVIS. There is a power development in Ogden Canyon.

Senator SUTHERLAND. And another separate company at Logan?

Mr. DAVIS. Perhaps so; I do not know about that one. There is one developing at Bear Lake.

Senator SUTHERLAND. And another in Pleasant Grove, in Utah County—two separate companies entirely?

Mr. DAVIS. As I say, I am not familiar with that.

Senator SUTHERLAND. You spoke about the available power sites being monopolies. Are you familiar with the mountain stream beginning on the northern boundary of Utah and coming down into the middle section, extending through the counties of Cache, Boxelder, Weber, Salt Lake, and Utah?

Mr. DAVIS. I have measured some of those streams.

Senator SUTHERLAND. There are innumerable mountain streams!

Mr. DAVIS. Yes, sir. I do not profess, Senator, to any detailed information with respect to Utah. I have stated what was my understanding—that a similar condition existed in Utah and in Colorado.

Senator SUTHERLAND. I was trying to show that in that similar conditions do not exist, and I wanted to attract your attention to the fact that in the locality that I am speaking of in these mountains—a series of valleys—there are innumerable mountain streams—sometimes 5 or 6 miles apart and sometimes 10 miles apart—stretching all the way down through that section of the State.

Mr. DAVIS. In national forests?

Senator SUTHERLAND. No, all stretching for a vast distance, and comparatively few of them up to this time withdrawn.

Mr. DAVIS. All right within the power of the Service. It would do some good in Utah, if that is the case, will it not?

Senator SUTHERLAND. I think some of the streams that I have mentioned have been withdrawn.

The CHAIRMAN. You want to be careful, Senator, so that you will withdraw them.

Mr. DAVIS. I mean if the Geological Survey is to do the work.

Senator SUTHERLAND. It seems to me that in the past some of the part of the State several streams have been withdrawn.

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Before leaving the subject of withdrawals, Mr. Davis, can you graphically illustrate to the committee the difference between a narrow withdrawal, which may be the case in some of the streams of the United States, and a wide withdrawal, which is necessary for such protection?

Mr. DAVIS. Yes, sir, on the San Juan—well, as far as a general rule the withdrawals made on the San Juan, and on the San Antonio Service included in general, a strip of land a mile wide on each side of the river, but I did not have the time to go into detail and to more exactly define it. The withdrawals made on the San Juan Survey, on their recommendation, is a strip of land a mile wide on each side. Every smallest legal survey is a strip of land a mile wide on each side, a quarter of a mile of a river, and to a considerable extent, so far as my information goes, that rule is applied, at least that there is the description by land lines, and that is the boundary of that strip of unsurveyed land. In many places the withdrawal of a mile is wide enough to cover all the power developments that where the ravines come in, and they frequently do, and to be covered, it must have a phenomenally steep fall to be the purpose of a withdrawal under the construction of an irrigation canal, and that is the purpose for this purpose to be covered, by the withdrawal that the Geological Survey makes, and to test that in a country where I knew the topography I had some maps made. Now these existing maps is a survey of the Rio Grande.

Mr. PEPPER. You produce this as an illustration of what you have said but not as bearing specifically on any one of these withdrawals or withdrawals?

Mr. DAVIS. This does not bear except as an illustration. It has not been withdrawn. What I have here is produced because we have to survey to know where the line comes. Now, the outside back line in this map shows the boundary that would be flooded by a dam built at the dam site there 160 feet high, which is about half the height of a dam that we have recently completed. That was back water up to this point here indicating somewhere. The red shading, or red coloring, shows the area that under the rule now follow

by the Geological Survey, would be withdrawn. This has no wide valley in it of any kind; it is not such a place as would be ordinarily considered a valley. There is very little irrigated land, and most of it is in a narrow canyon, but there is scarcely any part of the range of this that the withdrawal made by the Geological Survey covers, or in the area that would be flooded, besides the dam. In one place, for instance, here [indicating] the river is in a box canyon, very narrow, and even there all the side washes show that the contour runs above the withdrawal made under that rule, and that is a good way above there. The depth of the water at this point would be something less, I think, than 100 feet, and if a dam were built there, 165 feet high, it would throw the water much farther away. That is on the Rio Grande. There is another [indicating] that shows an area where the Reclamation Service has developed power and is now furnishing power from those points, or will do so when the irrigating season opens, for pumping on 50,000 acres of land in Idaho. The black line there shows the flowage line of that reservoir. Since the survey on which that line was based we have increased the height of the dam 5 feet, and it still is less than 60 feet in height, while a much higher dam is feasible and may be built in the future, which would throw the black line still farther away, of course. Now, the red shading here [indicating] represents the withdrawal that would be made on that power site, which is nothing else, by the rule of the Geological Survey, and you see the black line pass outside of it in many places. As another illustration, here is another power site [indicating] which is being held for reclamation purposes. This is also in Idaho at another point. The blueprint shows the outline—I have forgotten the height of that dam, but I think it is about 120 feet. It would flood the area within the outside lines.

Mr. JAMES. Which do you mean is the outside line?

Mr. DAVIS. This crooked contour line along here would be flooded by the dam that it would be wise to build there and which I firmly believe will be built, and not long hence. The area the Geological Survey would have withdrawn there is in red. There are very wide areas there, covered by that withdrawal. That is a power site and nothing else. These are illustrations merely to show as a proof, but we have the accurate information. These are the basis of my conclusion, these and many others, that a wider strip than that adopted by the Geological Survey is wise, if we propose to conserve all of the power possibilities.

Senator ROOT. Mr. Davis, under what laws have Senator Flint's constituents been getting possession of these power sites in California?

Mr. DAVIS. All the land laws. The scrip provision is one popular one.

Senator ROOT. That is locating railroad scrip?

Mr. DAVIS. Yes, sir; forest reserve scrip. I can not speak with any accuracy on that point, however, and I do not think I had better say anything about it.

Senator ROOT. What prices have they been paying to the Government for that land they have taken?

Mr. DAVIS. I can not tell you—in many cases, judging from a general knowledge that I have; without a general knowledge of that region; it is not one of intimate knowledge to me. I am not well acquainted with it, but on general principles I should say that very

often they find the land—frequently that they find the land—although it is private ownership, and they pay in that way for the Government. Then, where it is public and there are many laws, the value of the stone acts and the strip provisions under the Government law.

Senator ROOT. Now, under this matter the Government is to pay for they pay the Government?

Mr. DAVIS. That has been a matter of discussion in the Interior Department of such recent date that I will not say I am sure with accuracy with regard to it. The minimum price was set at a long time ago, which obtained until Mr. Nathan, I think, the Commissioner, was, I believe, \$2.50 an acre, and that was the minimum price.

Senator ROOT. And what reversal of policy is that, I think, made?

Mr. DAVIS. It was found that the price of the land was not so expressed as a minimum price and not as a limit of the price. It was clearly implied that some other price was allowed, and Mr. Nathan ruled by him that it ought to be somewhat near the value of the land.

Senator ROOT. That is to say the value of the land for power purposes?

Mr. DAVIS. No, I did not say that.

Senator ROOT. Well, that is what I desire to know, what does mean by the value of the land for agricultural purposes, or for what?

Mr. DAVIS. Well, for anything—the most valuable use of the land.

Senator ROOT. Would that include the use of the power?

Mr. DAVIS. I presume so. I am not sure. I am not sure with accuracy on the rules in that respect, because it is a matter that has not come within the purview of the Reclamation Service, and I have been attending closely to business.

Senator ROOT. Well, I infer from what you have said that people who have been taking up these power sites have been getting them at very much less than their actual value as power sites. I want to know if that is correct?

Mr. DAVIS. I presume that is the case.

Senator ROOT. You have no idea as to the amount of variance between the prices paid to the Government under the timber and stone law or under the other law, and the real value of these sites as power sites?

Mr. DAVIS. No, sir; I have no knowledge on that point.

Senator ROOT. Has there been any estimate made to ascertain what difference in value there is?

Mr. DAVIS. No, sir, and I think it would be unprofitable to do it. It is impossible, I think, to estimate with any valuable accuracy the present value of a power site; it depends on so many contingencies of the future, and most of them have no considerable selling value for that purpose at the present time. It is their future possibilities, as a rule, rather than present values. This whole conservation, so far as my acquaintance goes, looks to the future.

Mr. PEPPER. And that particular point that you have just been speaking of suggests short-term leases and revaluation, etc., as those possibilities become actualities; is that correct?

Mr. DAVIS. I should think so; that seems to be expressed in legislation recently introduced.

Mr. PEPPER. Now, before passing to the next point, is there anything else that you want to say with reference to this matter of withdrawals that we have been discussing?

Mr. DAVIS. We were just discussing the sufficiency of the present withdrawals by the Geological Survey to protect the power—and I do not know the page of the reference—but I find in the record, as given by the Reclamation Service by the Geological Survey here, withdrawals made along the Missouri River January 18, 1909, restored April 7, 1909, rewithdrawn May 29, 1909, the latter being under the direction of the Geological Survey, and where the withdrawal occurred it is narrower than the original withdrawal made under operations of the Reclamation Service. Now, on July 13, 1909, a still later date, a portion of these lands were restored on the recommendation of the Geological Survey. What initiated that I do not know, but a recommendation comes to our office as a part of the official record that those lands were restored on January 13. The letter of which I speak quotes a report from Mr. Leighton, who has this matter in charge—I do not know the page on which the quotation is, but it is quoted in this record—in which he says there is good power in this region, but the United States has lost it. The lands withdrawn are of no value. On that report the lands were restored. The lands restored are shown on that diagram outlined in blue. Also they are distributed along the Missouri River. The report on which they were restored states that there is good power along that reach, and the committee can put its own interpretation on the reason given for making the restorations. I do not understand it.

Senator FLINT. Whereabouts in the Missouri River is it withdrawn?

Mr. DAVIS. A short distance below the junction of the Madison, Gallatin, and Jefferson, which form the Missouri.

Senator ROOT. Is that one of the items on page 86?

Mr. DAVIS. I am not familiar with this document.

Senator FLINT. That would be above Great Falls?

Mr. DAVIS. Yes, sir; it is near Logan, 10 or 15 miles below Logan and above Helena.

Senator FLINT. Is there any power being developed at that place?

Mr. DAVIS. I do not know. There is a good fall to the river and power is very valuable in that region. Power is being developed in that region. The only interpretation that I can put on that report is that the policy seems to be, as carried out by the Geological Survey, that unless all of the lands that are to be affected by certain power development can be withheld none of them will be. I do not know that that is correct, but that is the only meaning that I can get from that letter. I can not understand it. There is another restoration on the same river in Montana, I believe it is the same river—no, on the Jefferson River, but the same drainage—a few miles above, which was restored on July 16.

The restoration made by the Geological Survey, or the recommendation made by the Geological Survey, which is also in the record, states that there is a good fall to the river there, but that the power can not be developed because there are two railroads paralleling the river at that point, the man who drew the report evidently believing that that prevented the development of power. The fact appears that the railroads were there, but there are many places, for instance, on the Truckee River, just below Truckee, where there are four power plants on the Truckee River with the transcontinental railroad running right along and paralleling and close to the river. The water is diverted in flumes or pipes or canals and carried along the hillside until a drop can be obtained and there it falls and power is developed

There are four large power plants successfully operating there, and if there was another railroad on the other side of the river it would make no difference; it would not interfere with the power development.

Senator FLINT. Do I understand you to say that you considered that letter, the recommendation of Mr. Leighton, to be that unless the Government has all the land in the proposed reservoir site that they ought to abandon the project as far as withdrawing the land is concerned?

Mr. DAVIS. I said that was the only understanding I could glean from it. I do not know that that is correct.

Senator FLINT. Or if the Government did not at this time own all the land on the proposed pipe line that then they ought not to make any withdrawals.

Mr. DAVIS. That would be the natural inference; as far as I am concerned that is simply an inference, however; it is not my knowledge, and it is possible that that action has been reversed. I do not know about that, but that is the way the record stands, and I can find reference to that.

Mr. PEPPER. We will look that up afterwards.

Mr. DAVIS. Very well.

Senator SUTHERLAND. The case you speak of where there are two railroads paralleling each other on the Jefferson, do you know whether or not the topography of the country is such there that the power can be obtained by diverting the water in the manner you have suggested—carrying it along by flumes and letting it down?

Mr. DAVIS. Power can be so developed; yes, sir.

Senator FLINT. At this point?

Mr. DAVIS. Yes, sir; I do not know that it is commercially feasible, but it can be developed.

Senator SUTHERLAND. I was wondering if it was a case that the only way the power could be developed was by building a reservoir, and if so, that would necessitate the flooding of the road.

Mr. DAVIS. That depends upon the fall of the river. On one stream there is a good fall sometimes developed by diverting, even though you have a tunnel the whole distance. Some power plants are built in that way in some places. They will not allow them to build in any other way. That brings up another point in connection with this map that was filed here ostensibly as a sample of the unbusinesslike methods of the Reclamation Service. The withdrawals made on the recommendation of the Geological Survey are shaded so that it looked pink. Now, that Owyhee River will be used entirely for irrigation. It is largely used for irrigation now, and it will eventually be entirely so used. The land is available valley; there are storage possibilities so that the water will be appropriated eventually on very valuable land. Now, this condition obtains on the Kern River in California, for instance. I am told that one power company went in there to develop, and they were prevented from making the power development under diversion unless they confined their water within tunnels. Now, if that same rule should be made here, which appears to be very likely, a power developed along here by means of a tunnel would, of course, be along a straight line, because that line is the shortest line between two points, and if a development were made in that way withdrawal would not protect all of the land, while the withdrawal that was made by the Reclamation Service would, in that particular case.

Mr. PEPPER. Mr. Davis, referring to that map, it is a fact, is it not, that those maps serve to call attention to mistakes that were made by the Reclamation Service in the original withdrawals?

Mr. PEPPER. In the original withdrawals?

Mr. DAVIS. Yes, sir. Those two maps relate to unsurveyed land where the Land Office maps are not accurate, and for that reason withdrawals are made particularly, but the maps show they were not made particularly enough to cover all the United States lands, really constituted blunders on the part of the men who made these withdrawals, but he outlined them because he did not use the Land Office information on the subject, although it was available it was overlooked in two cases out of the number that were made.

Mr. PEPPER. But still that map of the Owyhee, to which you have just pointed, is all unsurveyed land. Your belief is that it is a more accurate map than the Land Office map which you used.

Mr. DAVIS. Oh, yes. The map submitted by the Geological Survey is far more accurate than most of the maps they have used or we use.

Mr. PEPPER. It is suggested by Mr. Smith's letter of September 3 that those two are typical maps. In what sense is that accurate and in what sense inaccurate?

Mr. DAVIS. They are the worst they could find. Typical in that sense.

Mr. PEPPER. Now, Mr. Davis—

Mr. GRAHAM. Before you leave that map—please, Mr. Pepper—on that map No. 1, Mr. Davis, there are four colorings shown to indicate the different kinds of land.

Mr. DAVIS. Yes, sir.

Mr. GRAHAM. The first one has under it the legend "Lands withdrawn January 18, 1909, on recommendation of Reclamation Service, but restored April 10, 1909, on recommendation of Reclamation Service." Is that the same kind of recommendation on the part of the Reclamation Service as you have heretofore described with the recommendation by direction?

Mr. DAVIS. Yes, sir.

Mr. GRAHAM. Of the Secretary?

Mr. DAVIS. It was.

Senator SUTHERLAND. What group is that?

Mr. GRAHAM. Owyhee.

Mr. PEPPER. Mr. Davis, I show you a letter which seems to have been written by one Everett W. Pattison to the President under date of May 14, 1909. It is printed on page 1172 of the testimony, and was by him referred to the Secretary of the Interior, who wrote to Mr. Pattison the letter which appears on 1172 of the testimony, and sent a copy to the President. Will you look at the letter of the Secretary of the Interior? I direct your attention particularly to the paragraph beginning—

As to restoration affecting water-power sites which have been made by me, they affect certain blanket withdrawals which were made without any previous or detailed knowledge of available water-power sites. They cover a very large area of enterable agricultural lands, and were withdrawn through the Reclamation Service, with no funds available for further investigation in that service. This accounts for the restoration and the direction to the Geological Survey, which is equipped with the means of securing the information desired.

I ask you whether that is an accurate account, as you understand it, of the reason for the restoration and the direction to the Geological Survey?

Mr. DAVIS. I understood that the reason for the restoration was that the withdrawals were illegal. This seems to give another reason. It is only my impression, however.

Mr. PEPPER. And your answer is based upon the supposition that the inference is the correct one?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. I direct your attention to a letter which appears to have been written by the Secretary of the Interior to Senator La Follette under date of May 25, 1909, which is printed. I direct your attention particularly to the first letter to Senator La Follette, which appears on page 1180, and the subsequent letter to Senator La Follette of May 25, and I ask you if you will look at those letters, directing your attention to the statement of reasons therein given to Senator La Follette, and state whether or not they are accurate.

Mr. DAVIS. What part of the letter?

Mr. PEPPER. In the letter of May 25.

Mr. JAMES. What page is it?

Mr. DAVIS. Eleven hundred and eighty-two.

Mr. PEPPER. If you will just glance over them, and I will ask you a specific question in a moment. In the letter of May 25 there is a paragraph, the second paragraph, beginning—

I have to advise you that the withdrawal of the lands in Utah was not revoked, because it was found to be approximately accurate upon investigation of the matter by the Geological Survey.

Is it your understanding that that is a correct statement of the reason why that land was not restored to entry?

Mr. DAVIS. Well, I do not know that I can dispute that.

Mr. PEPPER. I did not mean to dispute it, but just to state it fairly.

Mr. DAVIS. Well, I know the fact to be that the Secretary told me not to send this in for restoration; but what his purpose was is a matter of inference, and he had given that order before any investigation had been made by the Geological Survey.

Mr. PEPPER. Now, Mr. Davis, I read to you from the letter of November 6, appearing on page 1232, written by Mr. Garfield to the President, which, on page 1233, reads as follows:

Within a few days after Secretary Ballinger assumed office he stated, in conversation with officers of the Reclamation Service, that these withdrawals were made in direct violation of law. He gave no other reason for objecting to them. He directed the Reclamation Service to prepare lists for restoring the withdrawn lands, but to do so slowly in order not to attract public attention.

The officers of the Reclamation Service explained to Secretary Ballinger the reason for the withdrawals and the methods used and urged that the Reclamation Service be permitted to carry out the original plan of restoring only such lands as might be found unnecessary. To this Secretary Ballinger would not agree, but held that any such withdrawal was illegal and directed the restorations.

In accordance with his instructions and not upon its own initiative the Reclamation Service recommended lists for restoration. Many restorations were made.

After this matter was brought to your attention during April Secretary Ballinger stated to the officers of the Reclamation Service that he had been instructed by the President to withdraw all the power sites that were known or could be discovered. He had prepared a letter directing the Reclamation Service to detail engineers to make examinations. Finally, upon the suggestion of the Reclamation Service, the Secretary directed the Geological Survey to make the examinations and prepare the list, not because the Survey had any more accurate information, but merely because it controlled a more available appropriation for field examinations.

Immediately thereafter the lists for rewithdrawals were prepared by the Geological Survey in cooperation with the Reclamation Service and submitted, but without field examination. Exactly the same kind of information was used that was used for the original withdrawals, the chief difference being that all entered lands were

eliminated by specific description rather than general exception. This difference in method of description accounts for the chief difference in total areas reported as withdrawn by Secretary Ballinger and by me. There is in fact no material difference when the proper deductions are made and this was explained to Secretary Ballinger, but seemingly not considered in the report to you.

It is to be remarked that many thousand acres withdrawn by me remain unquestioned although withdrawn upon the identical information which was reported to you as inadequate.

Is that substantially a statement of information given by you to Mr. Garfield or is it—

Mr. DAVIS. It is. The only inaccuracy in that is based upon what I have noted was a slight misunderstanding. There is a statement there that there is no material difference between the withdrawals, except that private land was excluded in one case and included in the other. That is not strictly accurate, but is what Mr. Garfield undoubtedly understood me to mean when I said that the main difference was the private land, and that was my understanding and is still my understanding of the fact. I am aware that Mr. Smith states that that difference is not as important as the other, and he may be right. He is wrong on some other points that I know of, and I am not ready to accept that statement, because it is a matter of opinion. The statement that has accompanied that same statement, though—that he knew withdrawals to protect all the power sites with the old ones—is not true, as I have illustrated; not proved, but illustrated as probably not true by these maps. In other words, the narrow withdrawal. As a matter of fact, it does not and can not cover all of the lands that would be valuable for power along some of the streams. It may be that the difference is not enough to talk about, but it is a fact nevertheless.

Mr. JAMES. What would have been the result as to water sites? Can you give the committee any information if all these lands restored by Secretary Ballinger and not rewithdrawn by him—would that have given private individuals or corporations any opportunity to have gobbled up water-power sites?

Mr. DAVIS. Not very important; no, sir. The difference is not very important.

Mr. JAMES. The question I ask you was, as I understand it, Secretary Garfield withdrew considerable lands from public interest?

Mr. DAVIS. Yes, sir.

Mr. JAMES. Then when Secretary Ballinger became Secretary of the Interior he ordered the restoration of that land?

Mr. DAVIS. Yes, sir.

Mr. JAMES. Since that time he has ordered the rewithdrawal of some of the land he ordered restored?

Mr. DAVIS. Part of it; yes.

Mr. JAMES. Is that true?

Mr. DAVIS. Yes; part of it.

Mr. JAMES. Now, the question I ask is this: If all of the land which he restored has been allowed to remain restored to public entry, what would have been the effect as to water-power sites?

Mr. DAVIS. If all of the land that he restored?

Mr. JAMES. Yes.

Mr. DAVIS. Well, they could have been absorbed, of course.

Mr. JAMES. Well, to any great extent; many of them?

Mr. DAVIS. They could have been, certainly. That left it in just the state it was before Secretary Garfield made any withdrawals.

Mr. JAMES. I mean were there many of them?

Mr. DAVIS. Oh yes; many of them.

Mr. JAMES. So the subsequent order rewithdrawing them left them in the same status that they were when he became Secretary of the Interior as to many water-power sites, in your judgment, to the Government?

Mr. DAVIS. Yes, sir; it does. What I thought was your question and explaining my answer at that time—I understood you to refer to the lands that were restored by Secretary Ballinger and not rewithdrawn. If they should pass into private ownership in some cases it would undoubtedly jeopardize the development of power, but they are not very important relatively. It is the land nearest the river that commands the situation most thoroughly, and no one would want to acquire those others except as a prelude to development.

Mr. JAMES. I thought I understood you to say that Secretary Ballinger contended all along that Secretary Garfield had no right to withdraw these lands?

Mr. DAVIS. Yes, sir; that is the fact.

Mr. JAMES. Now, under what law did he assume to exercise that same power which he had theretofore denied Secretary Garfield?

Mr. DAVIS. I am not aware. I suppose the same way that Secretary Garfield did. That is the general supervisory power, although it is not so called.

Senator PURCELL. He testified there was no legislation covering that.

Mr. DAVIS. Yes, sir; he testified there was no legislation.

Mr. MADISON. Didn't he make this distinction; that in the case of his withdrawals the withdrawals were merely temporary?

Mr. DAVIS. Yes, sir.

Mr. MADISON. And merely in the aid of future legislation?

Mr. DAVIS. Yes, sir.

Mr. MADISON. In other words, that he simply withdrew the land for the purpose of giving Congress opportunity to act?

Mr. DAVIS. That is what he states; yes, sir.

Mr. MADISON. The necessary inference would be that if Congress don't act he will restore them to the domain?

Mr. JAMES. Now, I would like to ask——

Mr. MADISON. Now wait a moment, please. His criticism of Secretary Garfield is that Secretary Garfield withdrew them for the purpose of aiding in the general scheme of conservation of natural resources, and withdrew them permanently as Secretary Garfield states, for the benefit of the public. Now that is true, is it not?

Mr. DAVIS. Yes, sir.

Mr. MADISON. And his criticism is that that can not be done, under the law?

Mr. DAVIS. Yes, sir; I presume that is it.

Mr. MADISON. That the only withdrawal that can be made is a temporary withdrawal for the purpose of protecting the public from immediate acquisition until Congress can act in the premises?

Mr. DAVIS. Yes, sir.

Mr. MADISON. Now there is the line of discrimination right there.

Mr. DAVIS. As I understand it, yes, sir.

Mr. JAMES. Did Secretary Ballinger indicate to you how long he was going to wait on Congress to act?

Mr. DAVIS. He did not mention it to me, but he may have to the officers in the department, the law officers of the department.

Mr. JAMES. Did he contend that there was any specific authorization of the law giving power to withdraw lands for the purpose of waiting upon Congress to pass some law which he might think advantageous to the public, and the right of a Secretary to withdraw the lands in the interest of the public? Did he ever claim that there was any legal distinction there?

Mr. DAVIS. I never heard him so claim. Well, let me see, possibly he did. I do not recall ever hearing him do so, however.

Mr. PEPPER. As respects this matter of temporary and permanent withdrawal, it is a fact, is it not, that land withdrawn, whether or not withdrawal is expressed to be temporary, is subject to the action of Congress?

Mr. DAVIS. Certainly, and also to the action of the Secretary.

Mr. PEPPER. It is also true, is it not, that that is expressed to be in aid of legislation, and that the only way in which legislation is aided is by preserving the subject-matter until Congress may legislate?

Mr. DAVIS. That is as I understand it.

Mr. PEPPER. And your thought is that these so-called distinctions are only verbal.

Mr. DAVIS. That is the way it looks to me, but I am not a lawyer.

Senator PURCELL. A withdrawal is a withdrawal?

Mr. DAVIS. Yes, sir; if the Secretary has the right to say to the entryman "you can not do it."

Senator PURCELL. Secretary Garfield could have restored those lands whenever he saw fit, later on?

Mr. DAVIS. Yes, sir.

Mr. JAMES. Did Secretary Ballinger, after the rewithdrawals of these lands which he had formerly restored, ever make any suggestions to Congress about remedial legislation that he desired of any character?

Mr. DAVIS. Yes, sir.

Mr. JAMES. What sort of legislation did he recommend?

Mr. DAVIS. I believe the bill was introduced. A bill was prepared in the Secretary's office, I think by Mr. Finney. At any rate he had it in charge, and Secretary Ballinger asked me to talk to him about it, and I did so, read the bill, and made some suggestions, part of which were adopted and part were not.

Mr. JAMES. When was that bill introduced into Congress?

Mr. DAVIS. I can not say.

The CHAIRMAN. I will say to Mr. James that the bill was sent up: some eight or nine conservation bills were sent up to me by Secretary Ballinger in the early part of the session. I do not remember the date. I introduced this bill, this water-power bill, among other bills.

Mr. JAMES. That was in this Congress?

Mr. MADISON. In his report he recommends it?

Mr. DAVIS. Yes, sir.

Mr. MADISON. And the President, in his conservation policy, recommends it?

Senator ROOT. Mr. Chairman, I suggest that we go on with this witness, and then go right over and pass those bills.

Mr. JAMES. As Secretary Ballinger has rewithdrawn the land awaiting action of Congress, I do not see that we are to be hurt in any way

Mr. PEPPER. Mr. Davis, the conference that you speak of respecting the draft of this bill; did that take place prior or subsequent to the 23d of April last?

Mr. DAVIS. It took place this winter.

Mr. PEPPER. Now, Mr. Davis, referring to page 1235 of the testimony—there is there printed Secretary Ballinger's letter of November 15th to the President. I call your attention in the first place to this language on page 1235 [reading]:

Regarding the assertions of Mr. Garfield respecting my conduct on the subject of water-power withdrawals, he is correctly informed that I regarded his blanket withdrawals, under the guise of reclamation withdrawals, where in fact they were not for reclamation purposes, as illegal.

I ask whether prior to April 23, 1909, there was any distinction made by Mr. Ballinger in his statements to you respecting the illegality of withdrawals under the reclamation act and under the general supervisory power?

Mr. DAVIS. No, sir; he told me many times that they were all illegal.

Mr. PEPPER. And with reference to the statement that these withdrawals were made under the guise of reclamation withdrawals, what is the fact, were any withdrawals made under that act otherwise than bona fides for present or prospective reclamation uses?

Mr. DAVIS. No; they are all bona fide.

Mr. PEPPER. It further says [reading]:

In working it out I could find no other solution except by way of restoration and rewithdrawal in the manner in which it was handled, and that to have the matter intelligently presented to Congress it was necessary to make new withdrawals with sufficient data to determine what they were withdrawn for.

The only error I made in the whole affair was in not having the restorations and rewithdrawals made concurrently, which I would have done had I been as conversant with the facts then as I am now.

If that passage which I have read is intended to express the reason for the original restoration, namely, as approving a plan involving a scheme to rewithdraw, is it, as far as you believe, an accurate statement of fact?

Mr. DAVIS. It is not in accordance with my understanding.

Mr. PEPPER. Was there anything in the statement or action of the Secretary of the Interior up to April 23, 1909, which disclosed the existence of any such plan or any such intent on his part?

Mr. DAVIS. Not to my knowledge.

Mr. PEPPER. Or to the Director of the Reclamation Service, in your presence?

Mr. DAVIS. No, sir; nor at any other time that I know of.

Mr. PEPPER. And were his statements and conduct inconsistent with the existence of such a plan?

Mr. DAVIS. His statements were, yes, sir; and I think his conduct was. I see no reason why if he had intended to hold any of these water-power lands that those he intended to hold would have been restored, nor do I see any reason why they should not be withdrawn, as he says, in the same act.

Mr. PEPPER. He says further [reading]:

The history, however, of this entire matter when fairly judged leaves no room for impugning my motives or of indulging in the opinion that I was coerced into the rewithdrawals. In all these particulars Mr. Garfield has been by some officer or officers of the Reclamation Service erroneously advised and an unfair and in some respects untruthful coloring given my relations to the same. In further confirmation of my

statements in this respect I append for your examination copies of all the correspondence between the Reclamation Service and my office on this subject, as well as copies of the restorations recommended by Acting Director Davis and approved by me. (See Exhibit A hereto attached.)

I ask you, in the first place, whether that statement of misinformation to Mr. Garfield is correct or not, as you believe?

Mr. DAVIS. I know of no misstatement made to Mr. Garfield which he has incorporated in his letter, or made to him at all. The only error in the impression he got, so far as I know, and which appears in his letter to the President, is the error that the only material difference between the withdrawals, or between the restorations and the rewithdrawals, was in the elimination of private lands.

Mr. PEPPER. And that is the matter about which you have already testified?

Mr. DAVIS. Yes, sir. Undoubtedly he interpreted the language a little differently from what I can and put a different interpretation on the use of the word.

Mr. PEPPER. With regard to the statement at the end of what I read you to the effect that these restorations had been recommended by Acting Director Davis and approved by him, you understand these to be the restorations which you have heretofore referred to as having been made under orders from the Secretary?

Mr. DAVIS. I think that is what he is referring to.

Mr. PEPPER. He speaks of Exhibit A thereto attached, and that exhibit, when examined, is found to be a file of correspondence on the subject of the general power withdrawals, and general power restorations, beginning with the restoration of May 30.

Mr. DAVIS. March 30.

Mr. PEPPER. I beg your pardon, March 30, 1909. These are some restorations, are there not, which were ordered by the Secretary on March 17 and subsequent dates?

Mr. DAVIS. The Salmon River is one, that is here; the Swan River, Montana, is one, that is here; the Missouri River, Montana—yes these appear to be the sites that were restored in that period.

Mr. PEPPER. I further call your attention to the fact that in the letter that I quote, Mr. Ballinger says, at the top of page 1236 of the printed testimony [reading]:

The withdrawals made by Mr. Garfield were generally in pursuit of a theory that the Executive was vested with a power to do any and all things which in his judgment might be proper to be done in the absence of specific constitutional or legislative prohibition, and did not truthfully show what they were made for; whereas the withdrawals which have been made during my incumbency have shown what they were made for, and have been accompanied by the express declaration that they were for the purpose of enabling Congress to adopt legislation in regard thereto. I have not adopted any subterfuge in this respect.

Waiving the question of what Mr. Garfield's legal theory was, I ask whether it is a correct statement to say that his withdrawals did not truthfully show what they were made for?

Mr. DAVIS. I do not regard that as a correct statement. I think the way I understood it. Mr. Garfield's orders and the Reclamation Service were what guided in that. He certainly did not use any subterfuge. If anything appeared to be Mr. Garfield's fault, it is mine.

Mr. PEPPER. Well, did you have any knowledge of any step or act done by you in this subterfuge or that could be fairly so?

Mr. DAVIS. No, sir; I certainly did not intend as any subterfuge anything I did in that connection.

Mr. PEPPER. Now, Mr. Davis, in the course of Mr. Pinchot's letter to the President bearing date November 4, I direct your attention particularly to page 1246 of the record, on which this language appears [reading]:

Under Mr. F. H. Newell, as director, the United States Reclamation Service has become an organization of exceptional efficiency. It contains many engineers of high character and standing, who are engaged on its projects at a fraction of what they could earn elsewhere. During the spring I became greatly concerned because it was coming to be generally believed in the Reclamation Service that the director had lost the support of Secretary Ballinger. Some of the best engineers were resigning and others were considering the same step. The situation demanded prompt action. Accordingly, in the hope of preventing further loss to one of the most important branches of practical conservation, I laid the matter before you. You assured me that the Reclamation Service would be protected. No one can doubt your own purpose in this matter. Yet I recognize with regret that the unfortunate situation to which I called your attention still exists. If it is allowed to continue, the Reclamation Service must inevitably disintegrate.

Leaving out the question of Mr. Pinchot's interview with the President, which I assume you know nothing of, is the statement that Mr. Pinchot makes, in the letter I just read to you, a substantially correct statement as of its date, November 4?

Mr. DAVIS. In my opinion it is.

Mr. PEPPER. Is it a substantially correct statement as of the present time?

Mr. DAVIS. In my opinion it is.

Mr. JAMES. Which page were you reading from?

Mr. PEPPER. I was reading from 1226 of the record.

On page 1260, at the foot of the page, Mr. Ballinger says, referring to his letter of the 15th:

The statement that the Reclamation Service had lost the support of the Secretary is without foundation, as is also the further statement that it is in danger of disintegration through any act of commission or omission on my part. The law lays upon the head of the Interior Department great responsibilities in its administration in reclamation matters. To say that efforts to become familiar with the operations of the service and to intelligently carry out the duties incident to that administration will accomplish disintegration, is entirely unwarranted and involves the assumption that the conduct of the reclamation officers can not stand scrutiny or supervision. As none of said officers have ever intimated any such idea to me, and it is unfair to assume that they are so regardless of their obligations to their responsible head as to secretly indulge in criticism to an officer who has no legal or other right to interfere in their affairs, it is reasonable to believe that the criticism made is based on idle gossip, to which no unprejudiced person, devoid of anxiety to condemn without a hearing, would have paid any heed.

Mr. PEPPER. Mr. Davis, what is the fact as to what has passed between you and Secretary Ballinger in regard to the Reclamation Service at any interview which you are now able to specifically recall?

Mr. DAVIS. On the 10th day of June last—well, I'll begin a little earlier than that—before the 4th of March frequent newspaper items appeared which announced that Secretary Ballinger was intending to make drastic or radical changes in the Reclamation Service, including the removal of the director. I saw one of those clippings when I was in Porto Rico, before I returned from that point. That was early in March, probably between the 4th and 8th, or somewhere along there. At various times other newspaper items of a similar character appeared, and when I returned to Washington, in conversation with various individuals, it was told to me as coming with some directness,

or comparative directness, from the Secretary's office that he was intending to make radical changes. Similar statements were made to me by the Secretary himself, I think beginning on March 17, in our first interview, that I feel confident that he made such a statement; he made it so frequently at any rate during those early days that there could be no doubt of his fixed intention to do so. He, however, generally accompanied such a statement by the further statement that he was not yet sufficiently acquainted with the workings of the service to determine just what he should do. But the newspaper gossip continued to appear.

On the 10th day of June Secretary Ballinger, in his office, stated to me that he had definitely decided upon the long-expected movement of changing the Reclamation Service. As he was telling me that in an official capacity I had no doubt it would soon be carried out, and told him that I believed my duty was to state to him what I believed would be the result. I told him that so far as my knowledge went that the office of the Reclamation Service had confidence in the present director, and I believed his removal under these circumstances, before the Secretary had investigated the service, would be taken as an announcement by the service that merit did not count under this administration. I told him that undoubtedly it would be possible to live down that impression if nothing further occurred, but I believed that that would be the general impression, that, however, was only an opinion, of course, and he of course so understood it. He disclaimed any desire to do any injustice to Mr. Newell, and began to discuss the possibility of other positions in which to place him, whether as consulting engineer in the Reclamation Service or various other capacities in the government employ, and I replied that I thought the matter was comparatively insignificant when compared with the interests of the Reclamation Service as a whole, and the integrity of the work. I told him then—in as strong language as I felt politeness and the proper respect would permit—that in my judgment his entire course since he had been announced as Secretary of the Interior, so far as my knowledge went, had been one that was subversive of the interests of efficiency in the Reclamation Service and tended to its disintegration. He asked me what I referred to, and I replied that I referred to the persistent gossip and rumor that these drastic changes were to be made. He protested that these announcements in the press were unauthorized, in which I, of course, acquiesced, but reminded him that perhaps, although unauthorized, they were nevertheless true in accordance with his frequent statements to me, and furthermore, that they had appeared with such circumstantial coordination, and we had verbal assurances from the newspaper men who wrote some of them that they were substantially the words of the Secretary himself, and that at any rate the public and the service regarded them as semiauthorized, at least, and as accurately representing the Secretary's views. He disclaimed any intention to injure the service, and I think that was about all that happened at that interview. I did express in as emphatic terms as I could, as nearly as I can recollect the language I now use, the sentiments I have now related.

The CHAIRMAN. It is now 5 o'clock, and we will take an adjournment until to-morrow morning at 10 o'clock.

(Accordingly, at 5.05 p. m., the committee adjourned until to-morrow, Saturday, March 12, 1910, at 10 o'clock a. m.)



NO. 20

**HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

MARCH 12, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California.

GEORGE SUTHERLAND, Utah.

ELIHU ROOT, New York.

WILLIAM E. PURCELL, North Dakota.

DUNCAN U. FLETCHER, Florida.

MARLIN E. OLMSTED, Pennsylvania.

EDWIN DENBY, Michigan.

E. H. MADISON, Kansas.

OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, Secretary.

SATURDAY, MARCH 12, 1910.

**JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
*Washington, March 12, 1910.***

The joint committee to investigate the Interior Department and Forestry Service met, pursuant to adjournment, at 10 a. m.

Present: Senators Nelson (chairman), Flint, Sutherland, Root, Fletcher, and Purcell; Representatives McCall, Olmsted, Denby, Madison, James, and Graham; Mr. Paul Sleman, secretary; also Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; also Mr. George Wharton Pepper and Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; also Messrs. John J. Vertrees and Carl Rasch, representing Secretary Ballinger; also Mr. E. C. Finney.

The CHAIRMAN. The committee will please come to order. A quorum is present. The chair desires to announce to counsel and witnesses that there will be only two meetings next week, Friday and Saturday. The examination will now proceed.

Mr. JAMES. Mr. Chairman, before we proceed, I want to call attention to the record here. It has shown me to be absent now for the last two or three mornings. I have been here all the time, and I would like to have whoever is in charge of that to make the proper correction to show my presence here. I have been present all the time, but the record persists in showing me absent all the time. Of course the record further along shows where I ask questions, but I think it ought to be corrected.

TESTIMONY OF ARTHUR P. DAVIS—Resumed.

Mr. PEPPER. Mr. Davis, the records show that at the adjournment yesterday you were giving a statement of the interview which you had with the Secretary of the Interior on the 10th of June last. I am not clear whether you finished your statement of that interview, or whether there was something to add.

Mr. DAVIS. That description of the interview was completed; yes, sir.

Mr. PEPPER. When I asked you the question that led up to that interview you mentioned others that had taken place, beginning with the 17th of March and carrying it down to the 10th of June. Do I understand they were all of a kind, or that the interview of the 10th of June was the specific interview to which your last testimony relates?

Mr. DAVIS. The interview of the 10th of June was the first one of that character that I had with the Secretary. I had in various interviews defended the Reclamation Service against criticisms, both of his and others, but had not undertaken to point out any effect which his attitude might have on the service, that I now recall, until the 10th of June.

Mr. PEPPER. In giving your account of that interview you referred to certain newspaper statements which you said reflected substantially what the Secretary had from time to time said to you, and that upon his explaining that they were not authorized you had replied that they corresponded with the facts as he had stated them.

Mr. DAVIS. Yes, sir.

Mr. PEPPER. How definite is your impression of that correspondence between what he had said to you and the statements in the papers?

Mr. DAVIS. They were all in general terms; both his statement to me and the statement to the newspapers, the only very specific thing was his intention to change the head of the Reclamation Service. I would like to make a correction in the record of yesterday; in the third line from the beginning of the long paragraph of page 1766 the words "head of" are left out.

Mr. PEPPER. It ought to read how?

Mr. DAVIS. It should read, "the long expected movement of changing the head of the Reclamation Service." Also a few lines further down, with the sentence beginning "I told him that so far as my knowledge went the office of the Reclamation Service had confidence in the present director;" that should be the "officers" of the Reclamation Service.

Mr. PEPPER. Was that all?

Mr. DAVIS. All of any importance.

Mr. PEPPER. You did not mean, I suppose, that there was anything like a verbal similarity between the statement he had made to you and what you had read in the newspapers?

Mr. DAVIS. I do not recall any verbal similarity. It was, however, a correspondence in the meaning.

Mr. PEPPER. Now, Mr. Davis, following upon this conversation on the 10th of June, can you tell us what has actually happened in the relations between the Secretary and the Reclamation Service? Has there been any action taken by him in connection with the affairs of the service that is germane to that conversation?

Mr. DAVIS. One week after that, the 17th of June, appeared a long item in the Washington Post, and near the same date a column or two in the Boise (Idaho) Statesman, which presented substantially the same sentiments which he had expressed to me of his decision to remove the Director of the Reclamation Service and to make other changes. From time to time he made statements to me that our salary grade was too high, list of salaries, and that he proposed to make radical changes in the service. Those statements were frequently made, and the last time I believe they were made was a week ago yesterday, or reiterated. The Secretary told me he proposed to reorganize the Reclamation Service and that our scale of salaries was too high. Some time, I think in May, perhaps, one of our engineers who was receiving a salary of \$3,300 was offered \$4,800 to go into other work, and he came to me.

The CHAIRMAN. Who was that?

Mr. DAVIS. Mr. C. H. Fitch. He came to me and said that he had adopted the reclamation work as his life work, and he felt very much attached to it, and desired to remain, but he did not feel that he could overlook an offer of this kind without finding out what his status was and whether his prospects in the Reclamation Service were good. I told him then that, while I did not care to advertise the fact, I thought it my duty in justice to him to tell him the Secretary's sentiment toward the people of the Reclamation Service; that I did not know whether or not he would be reduced in salary or dismissed, or changed in any way, but I told him, as near as I could remember them, the facts of the Secretary's attitude toward the service, and that I could not predict the future at all. Mr. Fitch left the service, and is now in the employ of the company.

Mr. McCALL. Mr. Davis, did you mention that circumstance to Mr. Ballinger—that is, did you call his attention to the fact that this engineer was proposing or thinking of leaving?

Mr. DAVIS. I do not recall that I did.

Mr. McCALL. And that it was a question of what his status and future salary should be?

Mr. DAVIS. I do not recall I did; no, sir. The Secretary did not know what changes he was going to make, as he told me he had not decided, but expected he would make radical changes of some kind, and made some expressions personally to Mr. Bien on the subject. He evidently had a good deal of confidence in him. He had not specifically said what he was going to do with him, however.

Mr. PEPPER. Mr. Davis, you have referred to a statement in the Washington Post, under date of June 11. I hand you a newspaper clipping headed, "Slated to be dropped," and ask whether that is the item you refer to?

Mr. DAVIS. The one I speak of—I was only speaking from my recollection—I mentioned the date June 17, and from memory. I think that was the date, because it was the anniversary of the approval of the reclamation act, and that fixed it in my memory, that the Secretary proposed—here, this heading, "May replace Newell," that is the one I had in mind. This other I had forgotten, but they appeared at such frequent intervals and so generally through the press, that I can not remember what papers they were in or how many there were, except that there was a constant stream of them. Sometimes they were short items, and sometimes long circumstantial articles.

Mr. PEPPER. Here is what purports to be a clipping from the Boise Statesman, headed "Make change in Reclamation Service." Is that the item you referred to a few moments ago?

Mr. DAVIS. Yes, sir; I see this is dated June 7, which was three days before the time he made the announcement to me. This article as I remember it—I read it at the time it came out—accords with substantial accuracy with his conversation with me.

Mr. PEPPER. I offer these three in evidence.

The CHAIRMAN. Is there any objection?

Mr. VERTREES. No, sir; I would like them to be printed. There are matters in them which I wish to call to the attention of the committee and for that reason I wish to have them printed.

The CHAIRMAN. Very well, they are admitted.

(The newspaper items are as follows:)

[Washington Post, June 11, 1909.]

SLATED TO BE DROPPED—F. H. NEWELL AND MORRIS BIEN MARKED BY BALLINGER—SUCCESSORS ALREADY CHOSEN—SECRETARY OF INTERIOR IS SAID TO HAVE DECIDED TO DISPENSE WITH SERVICES OF IRRIGATION DIRECTOR AND LEGAL DEPARTMENT HEAD—E. H. THOMPSON AND A. C. CAMPBELL MENTIONED FOR PLACES.

When Secretary Ballinger, of the Department of the Interior, returns from Seattle and the inspection trip he is making of the Indian reservations and irrigation projects, there will be one of the most severe shake ups in that department in its history, according to a person close to administration circles.

It is said the Secretary will begin at the top, on bureaus and divisions, and will use the official ax with telling effect. It is stated that if the Secretary gains his point F. H. Newell, director of the United States irrigation service, will be one of a num-

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ber to be retired. It is also said that Secretary Ballinger has selected a successor to Mr. Newell, and that R. H. Thompson, of Seattle, is the man he has in mind. It is not known whether Mr. Thompson will accept the appointment, but the place, according to the informant, has been offered him.

Among the others scheduled to go, it is said, is Morris Bien, head of the legal department. A. C. Campbell, of New Mexico, is the man, it is said, who will succeed Mr. Bien. Mr. Campbell at present is connected with the Department of Justice, and it is known that Secretary Ballinger has asked Attorney-General Wickersham for Campbell's service.

INDIAN AGENTS TO GO.

It is said that there will be several Indian agents who also will lose their scalps when the Secretary returns. In fact, the Post's informant said there probably would be charges of illegally conducting the Government's business on some of the reservations.

Secretary Ballinger, it is understood, is opposed to all Roosevelt methods and will remove all Roosevelt appointees who do not come up to the standard set by Mr. Ballinger and his coworkers.

Secretary Ballinger, it is reported, will accompany President Taft over a greater part of his western trip and point out to the Chief Executive some of the defects in both the Indian and irrigation services in the field.

[Washington Post, June 17, 1906.]

MAY REPLACE NEWELL—SECRETARY BALLINGER DESIRES NEW RECLAMATION HEADS—R. H. THOMPSON MENTIONED—PRESENT INCUMBENT, IT IS STATED, WILL BE RETAINED AS GENERAL CONSULTING ENGINEER—A. C. CAMPBELL, OF NEW MEXICO, MAY SUPPLANT MORRIS BIEN, NOW HEAD OF LEGAL DEPARTMENT OF SERVICE.

If Secretary of the Interior Ballinger is able to carry his point, F. H. Newell will be retired from the office of Director of the United States Reclamation Service some time during the fall. He probably will be succeeded by a man now in the government service. It is said that R. H. Thompson, of Seattle, is the person Secretary Ballinger has in mind for the position. It is not known that Mr. Thompson would accept the appointment; in fact, there is doubt about it, but Mr. Ballinger would like to appoint him, and it is said that the place will be offered to him as soon as a decision is reached with reference to Mr. Newell.

Mr. Newell, unless he so desires, will not sever his connection with the Reclamation Service, but will be retained as an engineer, probably a general consulting engineer.

MAY SUPPLANT BIEN.

It also is stated that Morris Bien, head of the legal department of the Reclamation Service, will be removed and A. C. Campbell, of New Mexico, now a special attorney of the Court of Claims in this city, be appointed. From reliable sources it is learned that the Attorney-General has been consulted in reference to the particular fitness of Mr. Campbell and that the special attorney received the recommendation of the chief of the Department of Justice.

In the case of Mr. Newell, it is said that efforts have been made in the past to have him replaced. About the time the change in the administration took place several western Senators were anxious to secure his removal. Secretary Ballinger, it is said, is aware that there is friction in the service and is anxious to eliminate that.

RATES MR. NEWELL HIGHLY.

Mr. Ballinger appreciates Mr. Newell's abilities as an engineer, but is inclined to the belief that he can find a more satisfactory administrative officer. By retaining Mr. Newell as an engineer officer he can save to the Reclamation Service the valuable advice of the present director on all problems affecting construction.

Mr. Ballinger is not ready to recommend a change at present. It is said he desires more detailed information before taking a radical step. During the summer the Secretary will visit personally a number of government irrigation projects, especially those that have given rise to trouble. He probably will accompany the President on his trip west. He desires, it is said, to interest the President in the matter and have him sanction any change the Secretary might desire to make.

[Boise (Idaho) Statesman, June 8, 1909.]

MAKE CHANGE IN RECLAMATION SERVICE—F. H. NEWELL DOES NOT POSSESS ADMINISTRATIVE AND EXECUTIVE ABILITY—WILL BE RETAINED AS CONSULTING ENGINEER—SECRETARY OF INTERIOR BALLINGER NOT SATISFIED WITH WAY DEPARTMENT IS BEING RUN AND DOES NOT THINK IT IS UP TO STANDARD—WILL MAKE DECISION AFTER THOROUGH INVESTIGATION.

NEWELL TO RESIGN.

F. H. Newell, director of the United States Reclamation Service, is expected to resign this fall. Rumor is current in Washington that Secretary Ballinger is contemplating a change. Lack of executive and administrative ability in his department is cause of dissension. Well-known engineer will probably be retained as general or consulting engineer.

Thorough investigation will be made before final action is taken. The fact that President Taft holds his cabinet officer responsible for results of various bureaus seems to be the reason for contemplated change.

STATESMAN BUREAU,
Washington, D. C., June 7.

Unless there is a change of programme, F. H. Newell will retire from the office of director of the United States Reclamation Service some time during the coming fall, probably to be succeeded by some man now in the government service. Who that man will be has not been determined, but the indications are that he will, in addition to an engineering education, have a comprehensive knowledge of the law. Mr. Newell, unless he so desires, will not sever his connection with the Reclamation Service, but will be retained as an engineer—probably a general consulting engineer.

About the time there was a change of administration it was learned that certain western Senators were anxious to secure the removal of Mr. Newell from office. That effort failed. In fact, those who talked most about securing the removal of Director Newell were the last to make any serious effort to accomplish their purpose. The agitation they started was of short duration. In time it completely died out.

BALLINGER DISSATISFIED.

But it develops that Secretary Ballinger is not altogether satisfied with the way the Reclamation Service has been conducted. While he finds no evidence of corruption or crookedness, no yielding to political influence, no flagrant maladministration, he finds more or less dissatisfaction, some little friction, and what he is inclined to regard as looseness in the conduct of that bureau of his department.

The situation in brief is this: While Secretary Ballinger finds no fault with the engineering work of Mr. Newell and has respect for his ability as an engineer, he inclines strongly to the opinion that he can find a more satisfactory administrative officer to take general supervision of the Reclamation Service—to become its business manager, so to speak. He recognizes that Mr. Newell's abilities lie along the lines of engineering rather than administration, and it is that fact which inclines him to the opinion that a change should be made. By retaining Mr. Newell as an engineer he can save to the Reclamation Service the valuable advice of the present director on all problems affecting construction, while by appointing a new director he believes he can overcome those unsatisfactory features of administration which do not meet with his approval.

NOT READY FOR CHANGE.

Secretary Ballinger is not ready to recommend a change at the present time, for he desires to get more detailed information before taking such a radical step. During the summer the Secretary will personally go upon a number of irrigation projects, especially those that have given rise to complaint and to trouble. On the ground he will find out for himself what has led to unsatisfactory conditions, and who is to blame. If his investigation fails to bear out his present impression, and if he finds that no fault attaches to Mr. Newell as director, he will alter his plans, and Mr. Newell will remain at the head of the Reclamation Service. On the other hand, if investigation sustains the Secretary in the impression he now holds, he will recommend a change after his return to Washington in the fall.

The inclination of Secretary Ballinger to urge a change in the head of the Reclamation Service is not due to the activity of politicians who have quarreled with Director Newell; it is not due to the recommendation of anyone. It is due to his own experiences with the Reclamation Service since he became Secretary of the Interior. As a government machine, that service is not running as smoothly as might be desired;

statements in this respect I append for your examination copies of all the correspondence between the Reclamation Service and my office on this subject, as well as copies of the restorations recommended by Acting Director Davis and approved by me (See Exhibit A hereto attached.)

I ask you, in the first place, whether that statement of misinformation to Mr. Garfield is correct or not, as you believe?

Mr. DAVIS. I know of no misstatement made to Mr. Garfield which he has incorporated in his letter, or made to him at all. The only error in the impression he got, so far as I know, and which appears in his letter to the President, is the error that the only material difference between the withdrawals, or between the restorations and the rewithdrawals, was in the elimination of private lands.

Mr. PEPPER. And that is the matter about which you have already testified?

Mr. DAVIS. Yes, sir. Undoubtedly he interpreted the language a little differently from what I can and put a different interpretation on the use of the word.

Mr. PEPPER. With regard to the statement at the end of what I read you to the effect that these restorations had been recommended by Acting Director Davis and approved by him, you understand these to be the restorations which you have heretofore referred to as having been made under orders from the Secretary?

Mr. DAVIS. I think that is what he is referring to.

Mr. PEPPER. He speaks of Exhibit A thereto attached, and that exhibit, when examined, is found to be a file of correspondence on the subject of the general power withdrawals, and general power restorations, beginning with the restoration of May 30.

Mr. DAVIS. March 30.

Mr. PEPPER. I beg your pardon, March 30, 1909. These are some restorations, are there not, which were ordered by the Secretary on March 17 and subsequent dates?

Mr. DAVIS. The Salmon River is one, that is here; the Swan River, Montana, is one, that is here; the Missouri River, Montana—yes these appear to be the sites that were restored in that period.

Mr. PEPPER. I further call your attention to the fact that in the letter that I quote, Mr. Ballinger says, at the top of page 1236 of the printed testimony [reading]:

The withdrawals made by Mr. Garfield were generally in pursuit of a theory that the Executive was vested with a power to do any and all things which in his judgment might be proper to be done in the absence of specific constitutional or legislative prohibition, and did not truthfully show what they were made for; whereas the withdrawals which have been made during my incumbency have shown what they were made for, and have been accompanied by the express declaration that they were for the purpose of enabling Congress to adopt legislation in regard thereto. I have not adopted any subterfuge in this respect.

Waiving the question of what Mr. Garfield's legal theory was, I ask whether it is a correct statement to say that his withdrawals did not truthfully show what they were made for?

Mr. DAVIS. I do not regard that as a correct statement. It is not the way I understood it. Mr. Garfield's orders to the Reclamation Service were what guided in that. He certainly gave us no orders to use any subterfuge. If anything appears to be a subterfuge it is not Mr. Garfield's fault, it is mine.

Mr. PEPPER. Well, did you have any knowledge or recollection of any step or act done by you in this matter which you regard as a subterfuge or that could be fairly so characterized?

organization of what is known as the Water Users' Association, that is an association of the landowners who are to deal with the Government in the distribution and purchase of water rights.

Senator SUTHERLAND. Mr. Pepper, do you consider it necessary to go into that matter in detail?

Mr. PEPPER. Perhaps not, Senator. Perhaps I can ask the question at once to which I intended to lead up, and then if it is not necessary to explain the matter we will save that much time. Mr. Davis, interrupting you in your statement of the business arrangement between the Water Users' Association and the Government, will you state to the committee what action, if any, during the last year the Secretary of the Interior has taken in the modification of preexisting arrangements for the collection of charges. I direct your attention particularly to the Klamath project.

Mr. DAVIS. There is no modification in preexisting arrangements that I know of that has been made by the present Secretary, but in the case of the Klamath and in other cases the contract of the Water Users' Association requires that when the Secretary has determined the cost of the project, on his request the Water Users' Association shall fix the par value of the capital stock and the number of shares, in accordance with his direction, and when that is done I believe it requires an amendment to the by-laws or something of that kind.

Mr. PEPPER. Of the Water Users' Association?

Mr. DAVIS. Of the Water Users' Association; yes, sir.

Mr. PEPPER. Which, of course, must be accomplished by a vote of the association.

Mr. DAVIS. Yes, sir; and in the Uncompagne Valley during the administration of Mr. Garfield a firm of attorneys who are influential there had advised some of their clients and irrigators that they might refuse to make that change that the contract required and thereby place themselves in a better position to resist the payment of the money to the Government. Those attorneys have consistently from the first advised people that they never would have to pay the money back. So, under their advice, this sentiment of refusing to adjust the stock in accordance with the requirements of the contract certain people were advocating that they be voted down, and the supervising engineer became somewhat uneasy and wrote to our office about the matter, thinking it might be beaten. He asked if we could not give him some authority by which he could check or close down the work in case the people indicated a disposition not to repay the expenditure. I drafted a telegram to him with my name attached to it and instructed him that if the necessary changes were not made in the by-laws promptly he should shut down the work. I took that to Secretary Garfield and asked for his approval on it. I told him that I should be glad to have him sign it if he cared to do it. He crossed out my name and signed his own. The telegram was sent, and it had an instantaneous effect; there was no difficulty in getting the necessary amendment with that circumstance on record. And exactly similar conditions arose on the Klamath project last October. It became necessary for the by-laws to be amended on that project for the same purpose.

Mr. PEPPER. That purpose means the increase of the capital stock to the extent necessary to secure the Government in respect to collection of charges.

Mr. DAVIS. And the increase of the par value of stock.

Mr. PEPPER. Yes, sir.

Mr. DAVIS. The same sentiment was being propagated there that if they should vote down one or both of those propositions they would be in a better legal position to resist the payment to the Government of the money invested. Some correspondence was had with the supervising engineer, and he informed the officers of the Water Users' Association that in case that proposition was voted down he would feel it incumbent upon himself to recommend that no more expenditures be made on that project and the money diverted to some other project where the probability of return was better. The people telegraphed, or the officers—the president of the Water Users' Association telegraphed to the Director of the Reclamation Service appealing from this decision of the supervising engineer, and the director replied that the change required was required by the contract, and that if it were not made he should approve the recommendation of the supervising engineer to divert the fund to some other project. They then telegraphed an appeal from that to the Secretary of the Interior. The Secretary answered the matter direct, I think, without reference to our office. At any rate, there is nothing in our files to show that it was there referred. I was in the field then. I read in the Klamath papers the report of the Secretary's reply, which was to the effect that he would not make any threats nor any promises. The telegrams and whole correspondence were printed with great rejoicings and many contemptuous references to the Reclamation Service, and, as a consequence, the amendment was voted down. And that is the status to-day. The department has now under consideration the resubmission to the people and has stated, in effect, now what the director stated before the election, that it will not be safe to spend more money on the project unless the people put themselves in line to return it.

The CHAIRMAN. I do not understand that, Mr. Davis. To whom does this stock go that you refer to, to this water-users' association?

Mr. DAVIS. The stockholders are the landholders. One share to each acre, ordinarily.

The CHAIRMAN. What relation has that stock to the Reclamation Service?

Mr. DAVIS. The water-users' association binds itself to collect the amount of the stock from the stockholders, and unless that amount of stock agrees with the acreage it does not return the entire cost.

The CHAIRMAN. But you, in apportioning the amount to be charged to each acre, can not under the law be guided by the stock. You must be guided by the cost.

Mr. DAVIS. Certainly; and for that reason the amount of stock and the par value is left open, and provided that it shall be assessed when the cost is determined.

The CHAIRMAN. Under the law you deal with each individual landowner, do you not?

Mr. DAVIS. Yes, sir. They issue to each individual landholder and have the additional security that the water-users' association also guarantees the payment.

Mr. McCall. That means a guaranty to the Government that they will get paid?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. And the capital stock you have referred to is a fund which stands back of the guarantee?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. And the purpose of the contract between the water-user's association and the Government is to secure an equivalence between the fund and the amount guaranteed?

Mr. DAVIS. That is it.

Mr. PEPPER. And the accomplishment of that result is attained under the contract by an increase of stock when and as called for by the Secretary?

Mr. DAVIS. Yes, sir; not only in the number of shares but in the par value of the shares.

Mr. PEPPER. Turning from that matter now——

Mr. MCCALL. I would like to ask a question there, Mr. Pepper.

Mr. PEPPER. Certainly.

Mr. MCCALL. As a rule, how do the landowners pay up? Does the Government realize very much from them?

Mr. DAVIS. There has not been a very great experience on that line as yet; we have not been irrigating lands very long. We have made considerable collections, however. On the Klamath project there is an exceedingly difficult situation. They have resisted payment, and we have had a lawsuit there. They are resisting it in the way I spoke of; but not many payments have yet become due, so we do not know what the result will be. And I would like to say to the committee that there is another point of view, aside from the collection of charges, which is an exceedingly important matter. The engineers of the Reclamation Service in charge of the work in the West have very great responsibility. They are isolated from the advice of other engineers, and from civilization to a great extent, and they have a great many difficulties, and the greatest difficulty of all is this matter of collection of payments. In almost every community there are people who want to get out of their payments, and where any considerable number of influential men believe that they can escape their payments and are willing to make the attempt they usually start a crusade of criticism to convict the Reclamation Service of extravagance or incompetence or something that will give them an excuse to hang on to nonpayment of the charges. That puts the local engineers, of course, under fire, as well as the main office, immediately, by interested persons, and the rest of them have no interest; the rest of the people have no interest in doing anything else. So that appears to be the sentiment of the community, and where that sentiment is dominant and leading the engineers are antagonistic, of course, to what appears to be the leading sentiment of the community. But I do not know of any cases yet where the engineer has not effectually carried out his duty, and of course he can not do it without the support of the Secretary.

The CHAIRMAN. Is not the landowner liable for a portion of the water charge; in each case, is not each man's land held for it?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. And is it not a fact that he can not under the law acquire title until he pays all of those charges?

Mr. DAVIS. That is the case with public lands, not private lands.

The CHAIRMAN. I mean with public lands.

Mr. DAVIS. The lands I am speaking of are private lands.

Senator SUTHERLAND. Mr. Davis, in the case of the Klamath project was the estimate of the cost of the project increased over that originally made?

Mr. DAVIS. The final estimate made by the Secretary has not been changed, but it was expected when the project was first surveyed that it would cost less than it is actually costing.

Senator SUTHERLAND. The point I want to get at is, was it, or was it not, represented to the people on the Klamath project that the project would cost so much money; that each settler would be required to pay a given sum per acre, and later along it was discovered that the project would cost more than had originally been stated to the people, and then it was stated to them that it would cost so much more?

Mr. DAVIS. The engineers gave it as their opinion that the cost there would be in the neighborhood of \$20 an acre; that was in the early part of the surveys. As the surveys progressed, and the prices increased all over the country, it was finally announced by the Secretary that it would be \$30 an acre.

Senator SUTHERLAND. But that was the fact, that it was necessary to increase it \$10 more an acre?

Mr. DAVIS. Yes, sir. It was increased over the original opinions, but the original opinions were never given out as final estimates.

Senator SUTHERLAND. But what did the people understand about it?

Mr. DAVIS. They understood the fact about it that the final estimate was coming from the Secretary of the Interior.

Senator SUTHERLAND. Whether that justified the understanding or not, they did understand that they would be compelled to pay \$20 an acre in the beginning?

Mr. DAVIS. Senator, there are newspaper clippings and correspondence in abundance to prove that the estimates could not be officially announced, and could not be known, until finally made by the Secretary of the Interior.

Senator SUTHERLAND. I understand that. But I am getting at the situation out there. They did understand—whether the understanding was justified or not on the original opinions given by the Reclamation Service—that they would be compelled to pay \$20 an acre—

Mr. DAVIS. No, sir.

Senator SUTHERLAND. Later they were given to understand that it would cost \$30 an acre. That is a fact, is it not?

Mr. DAVIS. No, sir.

Senator SUTHERLAND. What is there wrong about that statement?

Mr. DAVIS. The fact is they were given to understand that they would have to return the cost. There has never been any change in that position from first to last.

Senator SUTHERLAND. Perhaps you did not catch the first part of my question?

Mr. DAVIS. It is true that engineers expressed the opinion that the cost would be about \$30 an acre.

Senator SUTHERLAND. That is all I have said. I have expressly stated to you that whether the opinion was justified or not the people out there understood from statements made that they would be compelled to pay only \$20 per acre.

Mr. DAVIS. I do not think that is quite in accord with my statement. The CHAIRMAN. Was that not your original estimate, \$20 an acre—the estimate made in the first instance?

Mr. DAVIS. Some engineers expressed that opinion; yes, sir.

Senator SUTHERLAND. Is it not true that that was the same rate in the Nevada projects? I have forgotten the name.

Mr. DAVIS. The Truckee-Carson.

Senator SUTHERLAND. That the people there were given to understand that the cost would be so much at first?

Mr. DAVIS. The first cost announced was \$22 an acre. I do not think there was any understanding different from that. There were few settlers there then.

Senator SUTHERLAND. There are some settlers paying more—\$30?

Mr. DAVIS. Yes, sir; \$30.

Senator SUTHERLAND. That has given rise to some dissatisfaction, has it not?

Mr. DAVIS. No, sir; I beg your pardon. The only settlers to which the \$30 applied were those who came in after the announcement of \$30.

Senator SUTHERLAND. I understand that it is a fact that some of the settlers there have paid \$22 an acre and other settlers, whether they came later or not, are compelled to pay \$30 an acre, and that has given rise to dissatisfaction among those people. Is not that true?

Mr. DAVIS. That may be, but is it a fact that anybody is paying \$30 an acre who formerly expected to pay \$22 an acre?

Senator SUTHERLAND. I have not said that. Will you please read the question, Mr. Reporter.

The reporter read the question, as follows:

Senator SUTHERLAND. I understand that it is a fact that some of the settlers there have paid \$22 an acre and other settlers, whether they came later or not, are compelled to pay \$30 an acre, and that has given rise to dissatisfaction among those people.

Mr. DAVIS. That is, whether they came later or not. I think that includes both classes.

Senator SUTHERLAND. Settlers who came later, then, are compelled to pay \$30?

Mr. DAVIS. That would be correct.

Senator SUTHERLAND. And that situation has given rise to a feeling of dissatisfaction?

Mr. DAVIS. Maybe so.

Senator SUTHERLAND. Maybe so. Do you not know that it is so?

Mr. DAVIS. I really do not know about that. I think perhaps it has.

Senator SUTHERLAND. Were you not present at the meeting that we held at Fallon?

Mr. DAVIS. No, sir.

Senator SUTHERLAND. Did you not go down with us, with Mr. Newell and the others?

Mr. DAVIS. No, sir; I was in the East at that time.

Senator SUTHERLAND. And you did not learn what occurred at that meeting?

Mr. DAVIS. It is in the record; I have not read it.

Senator SUTHERLAND. You have not heard it from any source?

...is the question of the United States, that the United States
Secretary of the Treasury, Mr. Caldwell, did not
think that he intended that which would
be the effect.
In other words, it is a fact that this question arose
in the United States, that the United States
Secretary of the Treasury, Mr. Caldwell, did not
think that he intended that which would
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In other words, it is a fact that this question arose
in the United States, that the United States
Secretary of the Treasury, Mr. Caldwell, did not
think that he intended that which would
be the effect.

THE UNITED STATES OF AMERICA
DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF STAFF
WASHINGTON, D. C. 20315
ATTENTION: THE ADJUTANT GENERAL
OFFICE
DATE: 10/10/54
TO: THE ADJUTANT GENERAL
OFFICE
FROM: THE ADJUTANT GENERAL
OFFICE
SUBJECT: THE ADJUTANT GENERAL
OFFICE
REFERENCE: THE ADJUTANT GENERAL
OFFICE

Mr. DAVIS. I know that there is more or less complaint from there. I think perhaps some. I have not heard specifically the reason that they do complain on that score as a rule.

Senator SUTHERLAND. But, as a matter of fact, there is more or less complaint upon several of those irrigation projects?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Because of the fact that the original estimate made has been increased?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. And that was the case at Klamath?

Mr. DAVIS. Yes, sir.

Senator FLINT. I would like to ask one or two questions at this point. Mr. Davis, in answer to my question on yesterday, discussing the matter of our trip in the West, and visiting these projects, I stated that the objections made by the settlers were trivial, and you disagreed with me. I would like to have you state now to this committee what the objections that were made by the settlers in that trip were that were not trivial.

Mr. DAVIS. I did not mean to disagree with you on that, Senator. I did not so understand myself. I do not know what the record shows.

Senator FLINT. You had been discussing that matter; that it is of great importance, that the Government has some \$50,000,000 in this reclamation fund, or more, and are now suggesting thirty more?

Mr. DAVIS. Yes, sir.

Senator FLINT. By an issue of bonds, and you raised the question as to the possibility of the settlers not repaying this money to the Government. Do you think there is any question about the settlers repaying this money to the Government?

Mr. DAVIS. I think there is some question, but I think it is pretty certain. We have tried to guard all the legal points, and there is another means, as the department or some one indicated, of collection: that is, that we can go after each individual landholder.

The CHAIRMAN. That is as to public lands?

Mr. DAVIS. No; private lands. As to the public land, of course we hold the title until they are paid for.

Senator FLINT. Now, as you stated a moment ago, this is of great importance, and in the trip, as far as I accompanied the party in the West, that question was directly called to the attention of the settlers in every locality—that as far as this committee was concerned there would not be any waiving of any claim against the settler in any way.

Mr. DAVIS. Yes, sir.

Senator FLINT. Now, during that trip do you know of any settler who disagreed in the meetings with the statement made by the committee and the Secretary; I believe that that was to be the policy?

Mr. DAVIS. I heard numerous arguments against doing that. The first one we had was in the lower Yellowstone.

Senator FLINT. Was that not a plea for the extension of the time of payment?

Mr. DAVIS. The argument that the attorney put up, as I remember it—and the record will correct me if I am wrong—was that because they had originally expected the charge to be less than it actually was, that they were bound only by what they originally expected

to pay. That, as you have well said, was effectually squelched by the committee. Every member of the committee and the Secretary talked to them straight from the shoulder and told them they would have it to pay, and I think they were convinced.

Senator FLINT. So that so far as the committee was concerned, and the Secretary, you are of the opinion that the impression was left with the settlers that they were to pay every dollar that the various projects would cost?

Mr. DAVIS. Very strongly, yes, sir; and it has had that very thing, an excellent effect. One of the most systematic campaigns for the repudiation of charges that has ever been carried on is the Carlsbad project on the Pecos River, and the direct talk given them by the committee and its members on that occasion led to a change in the management of the water users' association. There were two particular leaders in that management and they have both been retired and others put in their places who claim a different sentiment. The effect has been very salutary every way.

Mr. PEPPER. Mr. Davis, do you find a harmony in attitude between the statement of the Secretary and of the committee which had the salutary effect that you speak of in the summer months of 1909, and the action taken by the Secretary in October of 1909 when the question arose with regard to the difficult Klamath situation?

Mr. DAVIS. Of course the action of the Secretary in October, 1909, was directly in a reverse direction. He is now taking, however, the position that the director took at that time. I have no idea, and do not wish the committee to think, that he intended that which would endanger the fund, but that was the effect.

Mr. PEPPER. In other words, it is a fact that this question arose between the settlers and the United States, that the United States should use its position of advantage in the way Secretary Garfield did?

Mr. DAVIS. Yes, sir; it certainly is. I think it is a perfectly legitimate policy and ought to be thoroughly understood without any question at all that the United States will not invest money where there is serious question avowedly of the money coming back.

Mr. PEPPER. Is the permission of postponement of payment of water charges a permission that tends in the right direction? I mean, of course, from the point of view of the interests of the United States?

Mr. DAVIS. That is not easy to say. On every project settlers want postponement of payment, and a number of them have asked for that and have advanced some reason why it should be postponed, and in some cases there are some reasons for it, if it could be done. The Assistant Attorney-General ruled that the payment could not be formally postponed; that the only thing that could be done was to—

Mr. PEPPER. Change the due date?

Mr. DAVIS. No; the only thing that could be done was to delay action against the land, the cancellation, and so forth.

Senator SUTHERLAND. Mr. Davis, has this not been suggested, that the law does not require that these payments shall be equal in amount?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. The law simply requires that the payments shall be made in ten annual installments, not equal annual installments?

Mr. DAVIS. Not more than 10.

Senator SUTHERLAND. Not more than 10 annual installments?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. And the suggestion has been made that those installments be made unequal?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. So that in the early years the settlers should be required to pay only a small amount, which shall be increased in the later years?

Mr. DAVIS. Yes, sir; that is correct.

Senator SUTHERLAND. And it would be easier for him to make the payment?

Mr. DAVIS. That has been proposed.

The CHAIRMAN. And the Attorney-General has ruled to this effect, that while you could not grant an express or definite extension of time, by simply letting it run you did not release the sureties or guaranties. Was that not his theory?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. And it is good law, too.

Mr. GRAHAM. How did those private owners of land bind themselves in the first place to this repayment?

Mr. DAVIS. They gave a lien on the land running to the Water Users' Association.

Mr. GRAHAM. They were consulted and gave their consent to the project, did they?

Mr. DAVIS. Yes, sir; and the contract clearly provides that they shall pay the costs.

Mr. GRAHAM. And this lien is what you refer to as the guaranty?

Mr. DAVIS. Yes, sir.

Mr. GRAHAM. Is it in the nature of a mortgage?

Mr. DAVIS. It is a mortgage and runs to the Water Users' Association, which the Water Users' Association contract to enforce.

Mr. PEPPER. Perhaps I am wrong, but I understood that the lien on the land ran to the Water Users' Association and represented the hold that the association has on the water user; as between the Water Users' Association and the Government there is an independent contractual obligation on the part of the association, and that is the thing that awhile ago you described as the guaranty?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Mr. Davis, let me ask something that may be a little foreign, but would it not be better to have legislation that would allow the lands that are in private entry to get the benefit of this; have the Government have the lien on the land; have them obligate themselves individually and give the Government the same lien and rights that they have on public lands?

Mr. DAVIS. That might be an improvement. It is a legal matter, Senator, that I am not competent to discuss.

The CHAIRMAN. Of course, that would necessitate legislation, but would that not be of assistance?

Mr. DAVIS. Perhaps it would. That is a legal question that I am not competent to discuss.

Mr. PEPPER. Senator Flint, may I ask whether it would trouble you to refer to page 1732 of the testimony? because I think that is the page to which your question to Mr. Davis refers, and I think

your recollection was correct. You asked the question, which ended in this way:

and, as a matter of fact, there were no complaints made, except of a trivial character, during the whole trip so far as I could see—isn't that a fact?

Mr. DAVIS. You mean by the settlers?

Senator FLINT. Yes.

Mr. DAVIS. Well, I would not suppose so. I thought they made some very serious complaints, but they were not very well founded.

Mr. DAVIS. I apologize, Senator. I was mistaken.

Senator SUTHERLAND. The next statement then, perhaps, reconciles the Senator from California and the witness, namely, that this serious complaint occurred after Senator Flint left the party.

Mr. DAVIS. Yes, sir.

Mr. GRAHAM. The balance wheel was lost.

Senator SUTHERLAND. He was able to hold things pretty level as long as he was there.

Mr. DAVIS. The question as to whether the complaint was trivial or not is of course not a very definite thing to determine. If a complaint is unfounded it may be of a serious character. It is not so trivial if bolstered up by a good deal of probability.

Senator FLINT. Just to refer you to the complaints that are in my mind that were brought to our attention at that time, the first was that the expense in connection with the operation of the system after it had been completed by the Reclamation Service was excessive, and upon investigation of that matter by the committee it was ascertained that the complaint was that a young man there, an engineer, had charge of the work, and they thought they ought to have simply a water overseer instead of this engineer.

Mr. DAVIS. Yes, sir.

Senator FLINT. That was one complaint?

Mr. DAVIS. Yes, sir.

Senator FLINT. I considered after the explanation that was made of that that the settlers were satisfied in a general way that it was necessary to have the engineer there instead of an overseer.

Mr. DAVIS. Yes, sir. You asked me to specify some of the complaints. One that I have in mind—I can not recall now when that was made—was the complaint made of the Klamath project. There was one man there—and I have not been able to find out who he was, who made the same charges that he made years ago and afterwards retracted before the Water Users' Association, and that was that there was great extravagance in the purchases of rights of way and various things on that project. He made his statements very complete before the committee, and they stood without any very material denial there because no other evidence was offered by anybody, that is on most points. There is, however, a very complete answer to that which was drafted shortly after that, and answered; a large number of newspaper criticisms were invoked. That testimony was telegraphed all over the country and appeared with scare heads in the Chicago papers, and in many other papers, and we, by the approval of the Secretary of the Interior, gave out a statement to the newspapers who took it. The Associated Press would not take it, but it fully explained the matter.

Senator FLINT. Mr. DAVIS, I was not present when you took up the Klamath project, and, of course, I do not know what occurred there

on the balance of the trip, but this I was desirous of having clearly placed in the record, if I can, from you, that during the trip when I was present in Montana and Wyoming, statements were made by every member of the committee, and by the Secretary, commending the Reclamation Service for the manner in which they had conducted the business, the ability shown, and the honesty in the matter of accounting.

Mr. DAVIS. Yes, sir; that is true, so far as my knowledge goes.

Mr. PEPPER. Mr. Davis, turning from this matter of the collection of charges, is it not a fact that there has been a direct intervention with the Secretary of the Interior in the relation between the Reclamation Service and the contractors during the last year?

Mr. DAVIS. There was one case. In our specifications for large and important concrete structures we have a proviso allowing the engineer to stop the work where, in his judgment, climatic conditions require it, and on some of them, in the case of high dams, where we are expected to do that in the summer, owing to the inferior qualities of the concrete placed in extremely hot dry weather. There are three reasons for that. One is that where a long and not very thick wall occurs, if it is built in hot weather it contracts when cold weather comes, and is likely to cause cracks which, of course, are undesirable in dams. Another reason is that it is difficult to keep the cement sufficiently worked during the period when it should be hydrated, and it may not fully hydrate and get its full strength; and in the southern country, where it is exceedingly hot in the summer, there is another very serious difficulty, and that is that the temperature causes the cement to set prematurely. It sets sometimes so quickly that it can not be used, and sometimes it has to be rejected when it will pass all the tests well in a temperate climate, such as San Francisco. That is regarded as a very important matter in the Reclamation Service, and we provide in our specifications for controlling the character of the work. The reservoir dam in southern Arizona is approaching completion and had reached a high point last summer. The engineer directed the contractor to stop work at a certain time, which he designated, and he promised to do it, which is, in my judgment, clearly provided in the contract and was always so intended when the contract was written, at least; and the contractor, not caring to have his force interfered with, thought he would get that changed. He appealed to the Secretary of the Interior, and, without referring the matter to the Reclamation Service or finding out the reasons for the order, the order was reversed by the Secretary's office.

Mr. PEPPER. What, if anything, did you do?

The CHAIRMAN. What place was that at?

Mr. DAVIS. Arizona; Roosevelt, Ariz.

The CHAIRMAN. When did the Secretary take that action?

Mr. DAVIS. I do not know; it was about the 20th of June, I think.

Mr. PEPPER. What, if anything, did you do with that matter?

Mr. DAVIS. I brought the matter to the Secretary's attention. I was traveling in the West, and the Secretary had started west just about the time the order was given. The order I believe was given by the Assistant Secretary, but the matter was considered by the Secretary himself here in Washington. On receiving notice to the effect that the engineer was reversed, the director took the matter

up with the Assistant Secretary, who said that he could not change the matter; it had been decided by Secretary Ballinger himself. Secretary Ballinger was in the West, and on the 14th of July, I think it was, I met him in Seattle and laid the matter before him, and explained to him the reasons for the order. We had also had considerable telegraphic information or correspondence with the engineer, in which he had been endeavoring to reach a compromise with the contractor in such way as to cause the least inconvenience and do the least damage to the work. It was such a compromise as would naturally have followed the order, and that compromise was finally approved by the Secretary, by which the contractor could carry on certain work, which was not so detrimental at that time, and it was arranged without damage to the United States and to the mutual satisfaction all around. But that character of action of course loosened the authority of the engineer over the contractor. It tends to put the engineer in the contempt of the contractor and to instill in the engineers a fear of carrying out what is their plain duty, in my judgment.

Mr. PEPPER. Is it then your experience that both in response to such matters as the collection of charges and dealing with contractors that it is really important for the interests of the United States that the Reclamation Service engineers should be strongly backed by the Secretary of the Interior?

Mr. DAVIS. I think so, when they are right, and, of course, not when they are wrong.

Senator SUTHERLAND. Suppose the Secretary thinks they are wrong?

Mr. DAVIS. He should overrule them then, of course. I do not care to criticize the Secretary and am only pointing out what I believe to be facts.

Mr. GRAHAM. Even in that case, should he overrule them without consultation, in your judgment?

Mr. DAVIS. I do not see how he can intelligently decide whether they are wrong or not until he gives them a hearing.

Mr. PEPPER. Mr. Davis, when Mr. Garfield was on the stand he gave testimony respecting the reclamation certificates, and some question arose respecting the state of accounts while that system was in force. Have you, at my request, procured the statement of the size of the reclamation fund at different dates, so that you are able to state to the committee whether or not there were at all times funds available to cover reclamation certificates authorized or outstanding?

Mr. DAVIS. Yes, sir. The maximum amount of reclamation certificates outstanding has never at any time been in excess of \$500,000. I think the maximum amount is considerably less than that. The maximum amount authorized altogether was less than \$1,000,000, and at no time were they, or could they have been, all outstanding at one time. The law prohibits the entrance into contract by the Secretary, under the reclamation act, exceeding the amount of money in the reclamation fund. Under the law the receipts of the sale of public lands become automatically, by the operation of law, a part of the reclamation fund as soon as received, less such amount as is provided shall be paid to receivers and agricultural colleges, and so on. And the records show that the gross funds available since the 30th of June, 1903, have never been as low as \$12,000,000,

and that the sums at any time—I have the figures by quarters up to 1906, before the certificates were started, and by months since that date—the excess of gross funds over the liabilities of existing contracts have never been as low as \$8,000,000 since that date.

Mr. PEPPER. When you speak of liabilities, you do not include, of course, reclamation certificates, or do you?

Mr. DAVIS. I did not include the reclamation certificates, so that the \$8,000,000 and some odd thousands represent the amount that stood behind, so far as the violation of law was concerned, the amount of certificates; it was never less than ten times the amount of the possible certificates. I have to make the further correction that there are a few small contracts of less than a thousand dollars which the director is authorized to make, not included in this. They are large in number but very small in aggregate amount, and I had them worked up for one or two periods as examples, and they never reached \$50,000 in the total, as I remember it; but it is a small amount and did not materially change it, and made still safe the statement that the net funds available have never been as low as \$8,000,000 since 1903.

Mr. PEPPER. It has been suggested in connection with the reclamation projects that the use of the certificate system by the Reclamation Service has operated to induce settlers to remain on the projects under conditions which have worked hardship to the settlers. What is the fact in regard to that?

Mr. DAVIS. The certificates were never issued by the Government; but only by the Water Users' Association. Of course that is understood. But being authorized by the Government they have been issued only in response to the urgent request of settlers who desired to build their ditches. Now, it may be that in a few cases settlers, if not permitted to use the cooperative system that has been described, would have abandoned their entries—that, I think, no one can deny, and no one can prove—but experience shows that their places would have been quickly taken by somebody else, so that, I think, it can not be certainly stated as a fact, and is very improbable, that they have operated to increase the troubles of the settlers in that way, and they have certainly operated strongly to decrease them by furnishing them with work and getting water to them sooner than they otherwise would receive it.

Mr. PEPPER. Has not a great deal of embarrassment resulted to the Government from the encouragement of settlers in this particular by the Reclamation Service?

Mr. DAVIS. No, sir; it did not encourage settlers; it was only used when the settlers were already there, and no embarrassment has resulted, so far as I am able to determine, in connection with the certificates to the Government, whatever. On the contrary, it has been the most powerful element that has ever been introduced into the operation of the Reclamation Service to counteract the criticisms and the attacks of people trying to escape their payments. As I have already said, certain people on various projects undertook to discredit the service in order to avoid payment. They are never in the majority, but they frequently do all the talking and appear to be the leaders of the community, because the rest keep quiet, having no interest; but as soon as they have worked out their payment, whether they hold certificates or not, those men become active and

ates of their neighbors, making their payments, too. They do not like to have the community get the reputation of repudiators when they are not. And if they hold certificates they become loudly interested, because the postponement of payment or the repudiation of payment makes those certificates of less value. Very strong evidence of that has been shown on a number of projects where there was harsh criticism of the Government up to the time that this was introduced, and where it was entirely quieted. That is the case on the Minidoka project, and it is also the case on the North Platte project. In the case of the Minidoka project, some of the settlers who did not want to make their payments made complaint about the oppressiveness of the Government, and found a great deal of fault about the delivery of water in the canals, and everything they could think of, and the papers in the city of Boise took up the refrain and began denouncing the oppressive action of the Government as acting so as to deprive poor settlers of their homes, and the newspapers on the projects answered with great spirit these attacks of the Boise papers and virtually told them to mind their own business; that this was not the community of repudiators, and any man who did not want to make his payments was a repudiator, and the Boise papers stopped the attack on that score. The people on the projects themselves were discredited in their own community by that kind of talk, and very quickly quieted it to a large extent.

Mr. PEPPER. Have you any view that you care to express respecting the relative advantage to the reclamation projects of a system of certificates such as you have been referring to, and the raising of a large bond capital such as is now in contemplation? I do not want to press you for an opinion unless you have one to give.

Mr. DAVIS. I do not care to express an opinion unless the committee wants it.

Mr. PEPPER. Exactly.

Mr. DAVIS. I do not want to introduce the subject.

Mr. PEPPER. You have an opinion on that subject, however?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Mr. Davis, I will read to you this letter which appears in the record of hearings before the Committee on Ways and Means of the House of Representatives, Sixty-first Congress, second session, on House bill 18398 and House bill 19079. It appears on page 43, and is on the letter head of the Secretary of the Interior. It reads as follows:

THE SECRETARY OF THE INTERIOR,
Washington, February 7, 1910.

MY DEAR MR. PAYNE: I overlooked stating to your committee on Saturday last, at the hearing in reference to the proposed issuance of bonds in aid of reclamation projects, that the policy of permitting the settlers upon projects to assist in their extension by working out their assessments and the issuance of scrip or certificates amounted to an inducement on the part of the Government for settlers to remain on certain of the projects, especially those to which the scrip privileges had been extended, and when it was determined by myself and the Attorney-General that the issuance of scrip was illegal under the act, it was felt by me that because of the inducements the Government had held out an extraordinary effort ought to be made, especially from a moral standpoint, to give the settlers, particularly upon the projects to which the scrip applied, water as early as it was possible for the Government to make the necessary extensions.

A great deal of embarrassment resulted from the encouragement of the settlers in this particular, and it was my suggestion, in August last, to the President that relief be secured by the issuance of bonds. The President thereafter, in his address at

Spokane, declared in substance that he would do what he could to induce Congress to give effect to the assurance of funds to enable the projects to be more speedily completed. I think this matter is worthy of consideration by your committee.

I want to say in addition as touching what is set out above, that at Toluca, Mex., the Department of Survey and Census this last summer a very large signboard invite settlers up to the irrigation project lying south of Toluca, on the branch road running north of the irrigation project, to make settlement and work out their assessments in water. As far as I can recall, the language of the sign was as follows: "Settlers may work on their payments." On seeing this sign I directed that the words "Settlers may work on their payments" should be immediately painted out.

I will be glad to have this letter made a part of my statements before your committee.

Very respectfully,

R. A. BALLINGER, Secretary.

HON. SENATOR E. PATTY,

Governor, Washington and Montana Counties,

State of Washington, United States

If you are cognizant of any of the matters or facts referred to in that letter, I shall be much obliged to you if you will point them out.

MR. DAVIS. I was with Secretary Ballinger when he saw this sign. I do not know whether he was there at any other time or not. We had to wait overnight there for a train, and we walked around the premises and discussed various matters, and that sign was seen and there was some comment regarding it, and my impression from him was that he looked at that somewhat critically. I explained to him that this project to which it referred—I do not remember in detail my explanation, but I do remember that I explained it—and these are the facts which I gave him in substance, that it was a public-land project, with no private lands at all, and no water-users' association, and consequently there could be no certificates issued. I do not think I said anything about certificates, because I never thought of it, because those were the facts well known, and there were no settlers waiting for water, and there is a large amount of land for which water was ready, storage reservoir built which would hold enough water for ten times as much land as is now cultivated there, and a canal system which covered twice as much land as is cultivated now, and which can be quickly and easily extended, so that that is one of the projects on which we desired settlers in order to utilize the work already made, and they are gradually coming in.

This sign was put there to direct the settlers regarding the facts, and those words occurred on the sign. I told the Secretary that we were arranging so that we could give employment to the settlers at such time as they might want it, and their teams could be used in extending ditches, and there was a great deal of work of that character to do, which could be carried on in a small way; these people could do it very conveniently for them, and assist them in making the payments. The impression I got, although he gave no orders on the subject, was that the Secretary doubted the advisability of keeping that on the sign, so that when Mr. Savage, the supervising engineer, joined us on the train on the way to the project, I told him in the Secretary's presence to paint out that line on the sign, although the Secretary had not told me to do it. I told Mr. Savage in a half-jocular way to paint out that sign, and I looked at the Secretary to see if that met his approval. He said, as I remember it, substantially to not do so—that he would consider it further. So far as I know nothing further was said on the subject. He certainly did not order me to paint out the sign. I saw Mr. Savage very recently—he was

the man in charge—and I asked him his recollection, which agreed with mine. I asked him if the sign had been painted out, and he said it had not. And I also asked him if he would have done so if the Secretary had told him to do so, and he said, of course he would. However, it was left undecided. The sign has not been painted out. It does not refer to cooperative certificates; it does not refer to a project on which cooperative certificates have ever been proposed, and it is the only place, I believe, where such a sign appears. No cooperative certificates were ever proposed there or ever proposed anywhere for the purpose of inducing settlers to come in. The conditions there were in every essential respect the reverse of those on which cooperative certificates were used.

Mr. PEPPER. Mr. Davis, what is the experience of the service during the last year in the matter of direct contact between the Secretary of the Interior and subordinate officers of the service, either in the field or the local offices, otherwise than by the passage of orders through the director and the chief engineer?

Mr. DAVIS. The Secretary gives orders to the field engineers, when he sees fit, as of course he has a right to do. He, I suppose, sometimes does inform our office, but sometimes he does not. There have been a number of cases where he has not, and some where he has. We have heard, as a rule, from the engineer that he has received orders to do so and so, and no special embarrassment results. Sometimes embarrassment has resulted, however.

In one case he instructed two supervising engineers to accompany him on a trip to Lake Tahoe and to Hetch Hetchy Valley on official business, and without notifying the director, but he did, just before he left, tell me what he had done, so that I knew it. And on that trip he discussed with Mr. Hopson, one of the engineers, the leasing of the power from the Truckee Canal, and, according to Mr. Hopson, he instructed him to issue advertisements for the lease of that power in the locality just in the vicinity, without specifications, with a view to entering into satisfactory contracts after the bids were in. Not knowing of this action, the Washington office undertook the preparation of specifications for the same purpose, and after preparing them submitted them to the Secretary of the Interior. Some exception was taken to them, and these specifications were eliminated and corrected and the specifications were finally approved by the Secretary, advertisement was authorized, and the specifications printed—200 copies of them. But just before the advertisements were actually issued our office learned that the same matter had already been advertised in a different way by the engineer, locally, and bids were submitted from there, so that duplicate advertisements were not put out, but a great deal of work was wasted in the Washington office on the matter, and there came very near being a rather embarrassing collision of publicity. The contract was finally entered into on the basis of the advertisement issued by the field engineer.

On another occasion the man in charge of the Chicago office received what he claimed was authority from the Secretary of the Interior to enter into extensive cooperative arrangements with a railroad company in what was called publicity work. That was unknown to the Washington office, and, so far as I know, was not mentioned in the report of the engineer, but he, in August, made arrangements with the company—

Mr. PEPPER. August of what year?

Mr. DAVIS. Last year, 1909.

Senator FLINT. Who is that—Mr. Perkins?

Mr. DAVIS. Yes, sir. And they received large contributions from one of the railroad systems and entered on what was called the black tent campaign. That was a course of itinerant lectures delivered in a black tent hired for the purpose, with lantern slides, advertising certain of the reclamation projects. The first we heard of that was a complaint from the officials of the Great Northern Railroad, who made vigorous complaint that the Reclamation Service was sending publicity lecturers into their territory in Minneapolis and not exploiting any projects in their territory, which was not satisfactory to them. That was the first I had heard of it, and the first that the director had heard of what was going on. The charge came in very vigorously that much favoritism was being shown, that they felt satisfied there was some corruption attached to it.

The CHAIRMAN. Who do you mean by "they?"

Mr. DAVIS. The people who made the charges.

Senator FLINT. The Great Northern Railway?

Mr. DAVIS. Yes. The officials of the Great Northern Railway.

Mr. JAMES. At whose expense was this tent campaign being conducted?

Mr. DAVIS. It was at the expense of the Harriman lines. The engineer, when called upon for an explanation, explained that the Secretary had authorized him to undertake that kind of work, and that he had solicited contributions from the various railroads to bear the expense, as they were interested in the settlement work. None of the railroads responded with contributions excepting the Harriman lines and the Santa Fe, and the Santa Fe only to a very small extent. Mr. Perkins reported that the matter had been brought to the attention of the representative of the Burlington road, who, he said, professed to represent all of the lines. The Burlington refused to cooperate in the matter.

Senator FLINT. By all of the lines you mean all of the Hill lines?

Mr. DAVIS. Yes, sir. All the Hill lines. And so the Hill lines were not solicited any further, but the lectures were carried on with money mainly from the Harriman lines and exploiting only projects in that southern territory. I am not sure—I never saw any of the lectures—I am not sure whether the Santa Fe projects were exploited or not, but it was quite an active work, and it so happens that the only projects of the Reclamation Service on which there is public lands waiting for settlement was on the Hill lines; there was none of it on the Harriman lines. Elsewhere there were only those projects which already have a superfluity of settlers on, where the land opened to settlement is private land; one of the two conditions. The campaign was carried on in the interests of the Harriman projects, he so charged. Although I can not prove it, I do not think it was denied.

Mr. JAMES. Who was in charge of these lectures?

Mr. DAVIS. Mr. Perkins was in charge, but was not the lecturer. Mr. Perkins was the engineer in charge of the Chicago office.

Mr. JAMES. And a government employee?

Mr. DAVIS. Yes, sir; in charge for the Government.

Mr. PEPPER. He is the head of the Reclamation Service office in Chicago?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. I, at the early part of your examination, was going to ask you about the relation between the Chicago office and the home office, and I think a member of the committee suggested that it was not germane at that time. I had reference to this part of your testimony. What was the relation between the Chicago office and the home office?

Senator SUTHERLAND. I think Mr. Davis explained that yesterday.

Mr. PEPPER. Did he? If so, I am mistaken. I was not referring, Senator Sutherland, to the point that you raise, but I think Mr. McCall suggested very politely that I was going into something that was irrelevant, and it was with the view to this, and I think I abandoned that line of inquiry.

Mr. DAVIS. I did not cover it fully.

Senator SUTHERLAND. He went into that and the Denver office and covered them both fully.

Mr. PEPPER. If you were going to make any fuller statement on the relations between the two offices, which is important, will you make such a statement? If not, will you proceed with the generalities?

Mr. DAVIS. Mr. Pepper, the main relation between these two offices is that the Chicago office has the routing of the various shipments over the various railroads, has the settlement of accounts with the railroads, and had, at that time, charge of the publicity work which could direct settlers.

Senator SUTHERLAND. I remember distinctly that Mr. Davis stated all of that yesterday. Did you not, Mr. Davis?

Mr. DAVIS. Yes, sir; I think I did.

Mr. JAMES. This campaign that you say was in progress was under the supervision of this chief engineer of the Chicago office?

Mr. DAVIS. Well, he is the engineer in charge; he is not the chief engineer.

Mr. JAMES. Well, the engineer in charge.

Mr. DAVIS. Yes, sir.

Mr. JAMES. Did he have any other men with him?

Mr. DAVIS. He had quite a large force—you mean the lecturer?

Mr. JAMES. Yes, sir.

Mr. DAVIS. The lecturer had two or three assistants; yes, sir. I have forgotten the names of the lecturers.

Mr. JAMES. They were officers of the Government?

Mr. DAVIS. No, sir; they were not officers of the Government. They were hired from this contributing fund by Mr. Perkins.

Mr. JAMES. And the expenses of the fund were paid by the Harriman railroads?

Mr. DAVIS. With the exception of a small contribution which the Santa Fe made.

Mr. JAMES. Did they pay the expense of this officer, the engineer in charge?

Mr. DAVIS. Perkins?

Mr. JAMES. Yes, sir.

Mr. DAVIS. That was a point that was in question a good while, and I will answer your question at length. When this charge was made that there was something crooked in the matter, Mr. Newell made specific inquiry of Perkins whether or not he was receiving any financial benefit from this arrangement. Perkins said that he

was not. At a little later date I talked the matter over with Perkins in Chicago, and, although I didn't ask him the specific question whether he was receiving any advantage, he gave me what purported to be a full account, and did not state any advantage that he was receiving. Mr. Newell, however, was not satisfied with the situation, and instructed Mr. Frank E. Huffer to make an examination. Mr. Huffer was the fiscal inspector of the Reclamation Service, and Mr. Newell asked him to make a full examination of the situation and report to him. He made an examination, and learned from the railroad company that Mr. Perkins, in addition to the contribution which was being made for the black-tent lectures, was receiving from the Harriman lines the payment of \$500 per month without any accounting.

Mr. JAMES. Without any what?

Mr. DAVIS. Without any accounting. Mr. Huffer then went to Mr. Perkins and asked him for the account. He rendered the account of the black-tent fund which was checked over by Mr. Huffer, and Mr. Huffer then pointed out that the total of these accounts did not agree with the amount stated by the railroad as having been paid to him. Mr. Perkins then stated that that was a private matter and none of Mr. Huffer's affair; that his instructions only authorized him to investigate the black-tent fund. Mr. Huffer replied that that was the only thing that had been heard about it, and his authority was intended to cover the whole matter, and that he would get further authority if necessary. Finally, Mr. Perkins submitted to him certain accounts which, however, did not agree with the total of the amount said to have been paid by the railroad, and only partly accounted for. By further questioning he admitted that out of \$500, \$200 was for expenses, personal expenses, that he would be put to in connection with the matter, and \$300 was payment for certain lectures he personally was to deliver in the interests of the railroad. Whether he delivered any lectures or not I have not learned. He has been delivering lectures some.

Mr. PEPPER. Do you mean, when you spoke of the \$200 and \$300, the gross amount or per month?

Mr. DAVIS. Per month.

Mr. JAMES. Was he getting paid by the Government during this time?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. If you happen to know, what is his government pay?

Mr. DAVIS. His government salary is \$3,300 a year, or \$275 a month, and the salary from the railroad of \$300 a month and \$200 a month for expenses, not all of which were accounted for as actual expenses, but nevertheless he received the money.

Mr. JAMES. Well, what advantage were the Harriman lines to derive from this work—the carrying of settlers into this country?

Mr. DAVIS. The advantage was the sending of this black-tent campaign into the hill country which exploits the Harriman projects. I suppose at least that was done, as it was an advantage to those projects. I presume that was one of the arrangements they had. At any rate it was done.

Mr. JAMES. But they were exploiting projects that offered no public land for entries, I believe you say.

Mr. DAVIS. Yes, sir.

Mr. JAMES. The Government was going on paying his salary all this time, and he was getting \$500 by way of expenses and by way of lectures that he was to give.

Mr. DAVIS. Yes, sir.

Mr. JAMES. How long did that keep up?

Mr. DAVIS. I don't know whether they ever completed it or not. I don't know how long it kept up. I think something like four months, and in the meantime it was investigated by Mr. Huffer, who reported the facts as I have stated. On receiving his report I telegraphed to Mr. Newell, who was in the West on his way East, to meet Mr. Huffer at a certain hotel, I believe it was, some point in Chicago where Mr. Huffer met him with the facts, and I sent by Mr. Huffer my recommendation to the director, in writing, that the resignation of Mr. Perkins be called for.

Mr. JAMES. This was brought to Mr. Newell's attention, you say?

Mr. DAVIS. At that time.

Mr. JAMES. But while it was in progress?

Mr. DAVIS. Yes, sir.

Mr. JAMES. Why didn't he stop that?

Mr. DAVIS. I was just about to state that. That is what I am getting to. Mr. Newell found this out from Mr. Huffer, I am just telling about, when he met him in Chicago, but he had previously tried to learn whether Perkins was receiving any personal benefit from the black-tent lectures. But the black-tent lectures having been authorized by the Secretary, according to Perkins he did not interfere with it, but he wanted to know whether Mr. Perkins was receiving any personal benefit. He asked him that question and Perkins denied it. Perkins states he did tell him that he was receiving pay, but Mr. Newell did not so understand it, for in Perkins presence, he dictated to the stenographer letters to the people who had been making the charges that he was receiving no personal benefit. He left a copy of that with Perkins, and the stenographer was present during the interview, and neither of them corrected him, so that they well understood Mr. Newell's understanding, whatever they may have said to him, and Mr. Newell certainly did not understand anything of that kind.

Mr. VERTREES. Were you present at that time?

Mr. DAVIS. No, sir.

Senator FLETCHER. Who started this movement in the first instance? By whose direction did Mr. Perkins begin it?

Mr. DAVIS. That is a question I can not answer. Mr. Perkins said the Secretary authorized it.

Mr. PEPPER. Did you initiate it—when I say "you," I mean the Reclamation Service—so far as you know?

Mr. DAVIS. No, sir. Neither Mr. Newell nor I, or, so far as I know, any other reclamation officer outside of the city of Chicago knew anything about it until the complaints came in.

Mr. PEPPER. There was some contention by Perkins that the black-tent scheme was within the scope of some general instructions Mr. Newell had given in February?

Mr. DAVIS. I don't recall any claim of that kind. Mr. Perkins explained the receipt of the payment for lectures by an alleged authority given a year before by Mr. Newell to deliver some lectures. He made that defense.

Mr. PEPPER. That is what I refer to. Now, Mr. Davis, taking up at the point you had reached in your statement, you stated, I think, that you had brought Mr. Huffer and Director Newell together and submitted to the director a written report recommending the request for Perkins's resignation; is that correct?

Mr. DAVIS. Yes, sir; I directed that to the director, who was my superior officer, in writing.

Mr. PEPPER. That was about when?

Mr. DAVIS. Some time in November.

Mr. PEPPER. What happened then?

Mr. DAVIS. I think it was the same day I saw Huffer's report, and spoke to Huffer about it; and then Newell met Huffer in Chicago and learned of him the situation and went up to interview Perkins and got his statement of the case, and took no action. When he came back to Washington we talked it over, and I told him I thought he ought, in his own defense, to take some action; but he objected to doing so because he said the matter had been handled by the Secretary, and it would be interfering with what the Secretary was doing. I did not take that view of it, and I thought he ought to take some action, anyway. He finally took the same view, and he wrote Perkins a letter, which, in polite terms, was practically a suggestion that he resign.

Mr. VERTREES. Have you got a copy of the letter?

Mr. DAVIS. It has been called for by the committee.

Mr. PEPPER. I have the file here that I am going to produce in a few moments.

Mr. DAVIS. About the time that I learned of the situation and sent Huffer to meet Mr. Newell in Chicago, I explained the matter to the Secretary—

Mr. PEPPER. Secretary Ballinger?

Mr. DAVIS. Secretary Ballinger. And I told him I thought certainly, on the face of the matter, no matter what defense he put up, by receiving large payments from people with whom he was transacting business, was very poor business ethics and he was not the proper man to be in charge of a large purchasing department, and handling large business transactions in the name of the Government. I had been of the opinion for some time that Perkins was incompetent—

The CHAIRMAN. Who had detailed Perkins there in the first instance?

Mr. DAVIS. The director, Mr. Newell.

The CHAIRMAN. How long had he been there?

Mr. DAVIS. Several years.

Senator FLINT. How long had he been in the service?

Mr. DAVIS. Nearly ever since it was organized, since 1902.

The CHAIRMAN. Then Secretary Ballinger was not to blame for detailing him to Chicago?

Mr. DAVIS. No; he had been there a long time before Mr. Ballinger came into office.

The CHAIRMAN. And you had for a long time regarded him as incompetent?

Mr. DAVIS. I regarded him as incompetent, but Mr. Newell did not agree with me, and he was continued in office. He is an active, able man when he will attend to business, but, as I explained to the

Secretary, the chief objection that I saw to him all the time—I had never suspected any dishonesty—but he always appeared to think that his chief function was to be on intimate social terms with railroad magnates and others, in order to influence them in the interests of the Government, and he has made frequent appeals for higher salary on account of the expense of meeting that class of associates.

The CHAIRMAN. Leading that kind of a life.

Mr. PEPPER. Referring to your conversation with the Secretary, will you state as near as you possibly can just what happened?

Mr. DAVIS. I explained to him briefly the contents of the Huffer report to the effect, as I have just stated, about the receipt of large payments from the railroad company, and told him that I had made a recommendation to the director that Perkins be asked to resign, and expressed my opinion that he was not the right man for the place, and ought to be removed. The Secretary remarked that Perkins was, he thought, a good man, and at any rate, he had a large number of influential friends in Chicago, and he thought I was wrong in my view of the matter, but that the office was badly run; he recognized that it was extravagant, badly handled, and ought to be reorganized, to which I agreed; and then some discussion was had of sending some one out with that end in view who was competent to recommend a reorganization of the office, and the proper force for cutting down expenses. I suggested then that Doctor Lind, who has organized the principal work of the service, and was well acquainted with the Chicago office, be sent out to make a report such as he spoke of. I did not know at that time that there was personal enmity between Doctor Lind and Mr. Perkins; it seemed that there was, which complicated matters a little further. But the Secretary very emphatically instructed me that nothing should be done that in any way would hurt Mr. Perkins's feelings or reflect on him in any way; so I verbally told that to Doctor Lind, and gave him the letter of instruction to confine himself to organization, and not to the investigation of Mr. Perkins or his dealings with the railroads, but simply to make recommendations regarding the organization. In this conversation that I speak of I mentioned the Huffer report and asked the Secretary if he wanted to see it. He replied that he did not care to do so. I had already given him the substance of it, so I did not regard that as implying anything at all.

Mr. PEPPER. Had you called his attention to the fact in the Huffer report where it appeared that this government employee was in receipt from the railroad of the salary you have mentioned?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. And the circumstances under which these receipts had been discovered, after first having been concealed by Mr. Perkins?

Mr. DAVIS. How fully I went into detail I do not recall, but when the director returned he wrote a letter to the Secretary of the Interior giving the substance of the Huffer report, stating just exactly what the payments were, and what Perkins claimed they were for, and I believe expressing the idea that it was not proper. At any rate, it was to correct a previous letter that he had written disclaiming any personal benefit that Perkins was receiving by his relations with the railroad with which he was doing business.

Mr. PEPPER. You mean after Mr. Newell had been in Chicago the first time he had written to the Secretary to the effect that on inves-

tigation he found that Perkins was not in receipt of any compensation on the side?

Mr. DAVIS. Yes, sir; he took Perkins's word for that.

Mr. PEPPER. And then later he corrected that impression?

Mr. DAVIS. He corrected that impression in the letter to the Secretary, stating the amount he was receiving and the circumstances surrounding it.

Mr. MCCALL. Do you have copies of those letters?

Mr. PEPPER. I have the file that I am going to offer.

Mr. VERTREES. I think the letters ought to be read, rather than for this witness to sit here and state their contents.

Mr. PEPPER. Before reading any letters, go back to your statement of the oral conversation with the Secretary, Mr. Davis.

Mr. DAVIS. Haven't I fully covered it?

Mr. PEPPER. I don't know, sir; the last thing you said was that you tendered him or submitted to him the Huffer report.

Mr. DAVIS. He said he didn't care to see the Huffer report. But about that time Mr. Newell also wrote a letter to Perkins which amounted to a request for his resignation. Shortly afterwards Perkins came back with the protest of the Secretary of the Interior about being investigated by Doctor Lind, and I suppose he told him of this letter from Mr. Newell, practically calling for his resignation. Mr. Newell came back to the office very much cut up about having received a severe reprimand from the Secretary for doing that. I went back to the Secretary's office with Mr. Newell and defended our action in sending Doctor Lind out there; and the Secretary again reprimanded Mr. Newell in my presence for interfering in the matter that he said that he, Mr. Newell, knew the Secretary was handling personally.

Mr. PEPPER. In the organization of the Reclamation Service who was Mr. Perkins's direct superior?

Mr. DAVIS. Mr. Newell.

Mr. PEPPER. Will you go on from that point?

Mr. DAVIS. Then the Secretary also vigorously objected to our having sent Doctor Lind out, whom he claimed was not only incompetent, but was biased against Perkins and was sure to make an unfair report, and suggested that some one else be sent out to whom no exception of that kind could be taken, and decided in the conversation to send two men from his own office, which he did.

Mr. PEPPER. Mr. Evans and Mr. Callahan?

Mr. DAVIS. Yes, sir; Mr. Evans and Mr. Callahan were the names of the two inspectors that went to Chicago. They received a copy of Doctor Lind's report, which recommended the removal of Mr. Perkins. Their report, however, was the reverse in conclusion. Their report can be seen in the files. It stated, however, that there were three matters only; that the office was badly organized and very badly handled—

Mr. MCCALL. Are you giving now the contents of the report?

Mr. PEPPER. This report—

Mr. MCCALL. Do you think it is well, where there is a report or a letter, for the witness to go on and state the contents?

Mr. VERTREES. I have objected some time ago, and have asked that these documents be read.

The CHAIRMAN. I think it would be fair to have the documents read rather than have the witness give his opinion.

Mr. PEPPER. The truth of the matter is the reading of them will take some time.

Senator PURCELL. Why not put in the documents, and then let the witness state his opinion.

Mr. VERTREES. I will certainly insist on reading them if the committee will permit me. I am not willing for this witness to sit here and put his interpretation upon the contents of these four reports. Here are four reports and all bearing on this question.

Senator PURCELL. Are all of those things reports?

Mr. PEPPER. I think, perhaps, I can get the record straight before we decide on just what course to take about the reading, by having the witness identify the papers I hold in my hand.

The CHAIRMAN. Where do those papers come from?

Mr. PEPPER. These appear to have been produced from the Department of the Interior in response to my call.

The CHAIRMAN. Very well.

Mr. PEPPER. Mr. Davis, I show you the first letter, dated September 16, 1909, from L. W. Hill, president of the Great Northern Railroad, addressed to Senator Carter as chairman of the Irrigation Committee, and ask what that letter is—or rather, a copy of it?

Mr. DAVIS. Do you want this read?

Mr. PEPPER. Not immediately; we will decide the question of reading presently.

Senator FLINT. I have a copy of that letter, and it seems to me if we start in to read these letters and all the correspondence with reference to this Black Tent campaign we will be here for some time just reading correspondence. I don't know how important you deem it, but our time is of some value.

Mr. PEPPER. The course that I was suggesting to pursue was this: To hand him one after another the documents I have in my hand, so we could get in the record the list of the documents, showing what they are.

The CHAIRMAN. You do not ask to have these read at all?

Mr. PEPPER. Not at all, at the moment. And then submit myself to the order of the committee as to whether they should be read, and if not all of them, which of them.

The CHAIRMAN. We will take them up one by one.

Senator FLINT. Mr. Vertrees seems to think that you ought to have all the documents read. They are important from his standpoint, no doubt, but it seems to me that there ought to be some way in which you could take out of those letters that part of them that you think is important to your side of the case; then let Mr. Vertrees take out the other, what he thinks is necessary, and then have the balance of the letters placed in the record. I have gone through this Black Tent business, and I have correspondence enough on the subject to fill a volume.

Mr. PEPPER. Nothing would please me better than to have all the documents read, but I do think the proper course would be to get the list in the record.

The CHAIRMAN. Have you any objection to admitting them in evidence without reading them, Mr. Vertrees?

Mr. VERTREES. On the contrary, I wish them all to go in evidence. My remark, as I remember it, related to the reading of the four reports. I did deem it advisable to read those four reports to the committee.

The CHAIRMAN. This is not a report; this is a letter from Mr. Hill.

Mr. VERTREES. I so understand it, and I see no reason why we should read these letters or anything but the reports.

The CHAIRMAN. Very well; it is admitted then without reading. (The letter is as follows:)

[Copy.]

ON LINE, September 16, 1908

Hon. THOS. H. CARTER,
Chairman Irrigation Committee, United States Senate,
Helena, Mont.

MY DEAR SENATOR: I will try to be brief as possible in presenting a matter that I think will interest you.

I attended the Minnesota State Fair, held September 6 to 11, inclusive, with the object of hearing the reclamation lectures and seeing the state and government goods exhibit.

The man in charge of the reclamation exhibit, called the "Black Tent Show," delivered a very interesting lecture, with pictures on the Grand Canyon of the Colorado Imperial Valley, Yuma Desert, palm trees, orange groves, etc.

I waited after the show and complimented him on the lecture and told him I should be glad to return if he would tell me when he would put on a lecture on any of the projects in North Dakota, Montana, or Washington State, and he answered that he had nothing on these. Asked him why, and he said they were not in shape. Told him some of them were finished and sadly in need of advertising to develop them, and he informed me that I was not posted. We straightened that out, and I explained to him that the people at the Minnesota State Fair were interested in the territory I mentioned, and the jobbers of our cities were certainly interested in that territory and in no way interested in the projects he was advertising.

I told him I had heard that the Reclamation Service had been criticised and I thought some men had been removed for taking too much interest in the southwestern portion of the country; that it was no reflection on him as he was a good lecturer, but his exploiting territory that was of no interest to the people of the Northwest who were at the state fair and neglecting what we claim as northwestern jobbers' territory was a serious matter and that I would take it up with his director, Mr. Newell.

I have no criticism to make of the lecturer, but I think Mr. Newell and his men in charge of these matters are seriously at fault, and he will find that the people of the Northwest will not drop the matter.

Following is a copy of my message to Mr. Newell:

"Reclamation Service are delivering illustrated lectures at Minnesota State Fair, exploiting the southern projects that are of no interest to the people of the Northwest. It is a disappointment to this community that you have no lectures on Montana, Washington, and North Dakota finished projects."

To which he replied as follows:

"Your telegram regarding lectures at state fair received. Matter is receiving careful consideration."

His reply does not give much satisfaction, as he says the matter is receiving careful attention; meantime the show goes on.

As a matter of fact, the Government has placed itself in the position of discriminating against all the other government projects in favor of projects along the line of the Union and Southern Pacific.

I will quote a little further of a letter from E. T. Perkins, engineer in charge, Chicago, to E. L. Lomax, general passenger agent of the Union Pacific Railway, Omaha, Nebr., that will explain all this.

I understand the position taken by the Reclamation Service to be that if some small road in the hands of a receiver had a project exclusively local to their line, say, in South Dakota, and the Great Northern had five projects exclusively local to its line, the Government is willing to advertise the projects on our line if we will pay the bill, while the South Dakota project would receive no advertising for the reason that the receivers of the small line would be unable to furnish funds to buy tent, chairs, lantern, hire lecturer, etc., and hire six or seven men to accompany, to advertise the little project in South Dakota, while the Great Northern, with a liberal allowance for

advertising, could arrange with the Government to have their projects advertised on such fair grounds, free of any concession charge, on the claim that it is the Government and not a private enterprise. The whole thing seems to be entirely inconsistent and would seem to me illegal from the standpoint of discrimination. Our jobbers sent Director Newell the following message:

"Regret that lectures Reclamation Service are delivering at our state fair are about projects that are of no interest to people in this part of the country. We think lectures should have been on finished projects in North Dakota, Montana, and Washington in which northwestern people are interested and urge you to so arrange throughout the Northwest."

Following is a copy of a telegram from our general traffic manager, Mr. W. W. Broughon, St. Paul, to E. T. Perkins, engineer in charge, Chicago, protesting against the Northwest being left out of the advertising:

"Mr. Maynard, in charge Reclamation Service exhibit, Minnesota State Fair, states that no stereopticon views of any northwestern irrigation projects; in fact, northwestern irrigation projects are conspicuous for the absence of advertising matter similar to that which covers your tables for southern projects. Hope you can arrange give northwestern projects stereopticon and other representation equal to southern projects. Will you accept special literature from the Sun River, Milk River, etc., for future exhibits?"

To which Perkins replied as follows:

"Your telegram received. Will be very glad to present lectures on northern projects and carry your literature if you will participate in expense. This subject was presented to the Burlington road on account of the Hill interest. They declined to participate and said they did not think any of the Hill roads cared to make an appropriation for such methods of advertising. Will write you in the morning, inclosing copies of correspondence with the Burlington."

I next quote a letter written by Mr. Perkins to E. L. Lomax, general passenger agent Union Pacific Railway Company, at Omaha, Nebr.:

"I have just had a most satisfactory conference with Mr. Westerdahl and believe we have a thorough understanding as to how this black tent project should be conducted. We estimate that the original outfit will cost, approximately, \$1,000, which will be distributed as follows:

No. 1007 Motiograph with moving-picture head.....	\$200.00	
gas outfit, with equipment.....	43.75	
15-foot screens.....	14.00	
Trunk for carrying outfit.....	42.50	
Extras.....	20.00	
		\$320.25
black tent 30 by 70 feet.....	275.00	
Chairs, 500 at 75 cents each.....	375.00	
Electric fans, 4 at \$15 each.....	60.00	
		710.00
Total.....		1,030.25

The services of the following men will be necessary:

	Salary.	Traveling expenses.	Incidental expenses.	Total.
Manager.....	\$150.00	\$150.00	\$50.00	\$350.00
Operator.....	112.50	100.00		212.50
Lecturer.....	150.00	150.00		300.00
Wagon and car keeper.....	80.00	70.00		150.00
Property man.....	80.00	70.00		150.00
Man in charge of literature.....	80.00	70.00		150.00
				1,312.50

The expenses of maintenance will appropriate as follows:

Installing, dismantling, drayage, wiring, etc., average 3 times per month.....	\$125. 00	\$375. 00
Expenses incurred by Mr. Perkins in going to and from Chicago to exhibits.....	100. 00	
Postage per month.....	25. 00	
Telegrams per month.....	25. 00	
Railroad fare (5 employed) per month.....	75. 00	
		600. 00
Printing and advertising:		
Passes for admission, 60,000 at 60 cents per thousand.....	36. 00	
Placards and posters for windows, announcing location of exhibits, 6,000.....	60. 00	
		96. 00
Monthly total.....		2,006. 50

No estimate is made for freight charges.

Mr. Westerdahl will explain to you the method by which we arrive at these estimates.

The following conditions I consider necessary for the success of this project, and I would request your consent to this method of handling the matter:

1. I must have exclusive control in handling matters relative to black-tent exhibits of the Reclamation Service.
2. Funds to be handled in an expense account to be deposited on requisition and to be drawn upon as necessary. At the end of each month vouchers to be turned in for credit against this account. Vouchers to be made out on government blanks. I am to pay everything in connection with the expenses of this undertaking. If, however, any amounts are paid out of this fund I should be notified at once, with copy of voucher.
3. I will make arrangements for a competent manager, whose duties are to select space for location of tent at each fair, to attend to the installation and dismantling of the same, to arrange seats, etc. Also to attend to the moving of the paraphernalia from fair grounds to car and arrange for the movement of the car from fair to fair and have general charge of the enterprise. I will also make arrangement for the employment of a lecturer, for the purchase of a lantern and outfit; also arrange for the employment of an operator; arrange for the employment of two doorkeepers, one of which will also act as car keeper, and one man to be in charge of literature, etc.
4. Lecture hours: Hours from 10.30 a. m. to 5.30 p. m., inclusive. Each lecture to start on the half hour with half hour intervening, which time is to be occupied with distribution of literature and answering personal inquiries.
5. I will make arrangements to get out a form of pass—same to be a good lithographed pass—to be used by people for admission, to contain the name and address of each person and to be distributed through the Congressman, mayor, city council, associations of commerce, and merchants.
6. Arrangements should be made for latest pattern automobile car, to be used exclusively from beginning of lecture tour to ending, for the handling of all paraphernalia in connection with this lecture tour, with signs on sides announcing property of car and object.
7. Only reclamation literature to be used—to be distributed judiciously and a careful record kept of the number of pieces issued.
8. In consultation with Mr. Westerdahl, I am to furnish itinerary and the Union Pacific to handle the press matters, that is, publicity through the newspapers, etc. As to open dates, after conferring together we have decided that the greatest good can be obtained by exhibiting at good, substantial county fairs in Indiana, Illinois, and Iowa, instead of the larger expositions in the cities.
9. I will prepare a poster, or placard, announcing the location of exhibits, etc., to be placed in prominent business houses and other conspicuous places.
10. I will make arrangements for the purpose of two government flags and Reclamation Service flags, as needed.
11. I will arrange for the painting of map showing all reclamation projects, on each side of doorway of tent.
12. I will arrange for a large sign for announcing that this is a United States Reclamation Service exhibit; two additional signs containing the same information to be placed one on each side of railway car carrying this exhibit.

13. Tentative itinerary:

At Des Moines, Iowa, August 27 to September 3.

September 4 and 5 to be used in moving exhibit to St. Paul.

At St. Paul, Minn., September 6 to 11.

At Milwaukee, Wis., September 13 to 17.

Open date from September 17 to 30.

At Springfield, Ill., October 1 to 9.

Open date October 10 to November 14.

At Council Bluffs, Iowa (National Horticultural Show), November 15 to 20.

(Tent will not be used from November 20 to December 18, as the lectures will be given indoors at the United States Land and Irrigation Exposition, Chicago, November 20 to December 4, and at the International Live Stock Show, Chicago, from November 27 to December 10, and at the Corn Exposition, Omaha, from December 6 to December 18. Relative to the Corn Exposition, however, same is indefinite; if space can be arranged for in the exposition building tent will not be in use, otherwise outside space must be arranged for tent between December 6 and 10.)

I will be glad to call the publicity campaign of the Hill and Santa Fe systems with a view of obtaining their cooperation and a proportionate contribution of money from them, but as to soliciting subscriptions from the water-users' associations or from local boards of trade or associations of commerce, the Washington office will not permit to do this.

I would request that you authorize Mr. Neimyer to transmit to me \$2,000, to be used in purchase of equipment and current expenses of the project for the first fifteen days, the amount to be carried in expense account as previously noted and receipts duly rendered for expenditures.

While in Washington I procured authority to proceed with the publication of standard pamphlets which we have discussed. I have now a large supply of literature on hand relating to your projects and will use this for distribution until the standard pamphlet is turned out by Rand, McNally & Co. Instead of having one pamphlet issued each month, I think it would be better to have all the pamphlets published as soon as possible, so that we can furnish information to inquirers concerning any of the projects on your system. The expense will be the same, though it will not extend over such a long period of time, and the results will be satisfactory, I am sure. Your agreement in this matter will then clear up all points in question between us. A record will be kept of the number of inquirers concerning each project.

At your earliest convenience please forward me letters of authorization to proceed in accordance with our general understanding, these letters to be on file as a matter of record.

You will note that this letter explains the whole situation and discloses that the so-called government show, for which they asked and secured free space at the state fair, account being a government show, is in reality a Union Pacific show being run under the auspices of the Reclamation Service.

For many reasons we could not consider indorsing the Reclamation Service's advertising scheme. It is not necessary to explain why, further than to say that I am sure the Government and any railway company that enter into such an arrangement will not only be liable to, but will justly receive, severe criticism, as it looks to me, as I have said, an inconsistent and perhaps illegal proposition, on account of discrimination.

It certainly is absurd to have six men accompany one lantern-slide lecturer, and I feel that we could advertise our own country and projects better than the Reclamation Service with their present organization, and if this is a sample of the work they do, it would cost us at least twice as much to advertise through them as it would direct.

Please also notice that no one is allowed in the reclamation tent who does not sign up and ask for literature, which on the face of it is absurd and impracticable and poor advertising, as nine-tenths of the people would not want the literature that would be sent them. The attendance at these fairs is made up almost entirely of a careless, idle crowd that take in everything in sight that is free, still the Government insists upon having their names and addresses in order to send them literature.

In reading over Mr. Perkins's letter it is interesting to note that no estimate is made of freight charges. I presume that if this equipment belonged to the Government they could ship it free, but if it belongs to the Union Pacific they could not ship it free, but in that the danger lies, and the proposition of a railroad company using the Government for a shield, behind which to carry on any operation, is a practice that we do not wish to take part in, and I do not think will be long continued by any road.

I can not help but criticize Mr. Perkins's attitude as set out in his letter, when he says he must have complete charge of handling matters in connection with the black tent exhibit of the Reclamation Service (all paid for by the Union Pacific). Vouchers to be made on government blanks. And says in the next to last sentence in para-

graph 2: "I am to pay everything in connection with the expense of this undertaking." Also notice that Mr. Perkins states that he is to make all arrangements with local managers of fairs, placing of advertising, etc. You will notice item No. 7, reading: "Only reclamation literature to be used * * *." Presume they object to the public knowing that the railway company is paying for the show.

You will also notice that in his letter to the Union Pacific he states that he will call on the Hill and Santa Fe systems with a view to obtaining their cooperation and a proportionate contribution of money from them, but as to soliciting subscriptions from the water-users' associations, or from local boards of trade or associations of commerce, the Washington office will not permit to do this. I do not believe the department would care to publish this statement, and I am sure what he calls the Hill Roads, and am inclined to think the Santa Fe system, would not think of entering into such an arrangement. Unquestionably the principle is wrong. If the railway companies are entitled to pay the bills, the people directly interested and who live on the projects should be entitled to contribute, if they cared to, and should be given same opportunity the railroads are, to accept or turn down the Government's proposition.

As a matter of fact, the matter was never put up to us. However, that is immaterial. The reclamation people did take the matter up with the general passenger agent of the Burlington Railway, but I have not as yet assigned any of the responsibility for the Great Northern to Mr. Eustis. As Mr. Eustis unquestionably understands this I should assume that the reclamation people would also understand it. I only mention this to show how entirely incompetent and unbusinesslike the outfit are.

In concluding his letter to the Union Pacific Mr. Perkins states:

"While in Washington, I procured authority to proceed with the publication of standard pamphlets which we have discussed. I have now on hand a large supply of literature relating to your projects * * *."

To parties interested in other projects that are not on the Union Pacific, this would be very interesting if published. While not suggesting that it should be published. I do think that people behind and interested in irrigation projects should be all treated fairly, and if they are not they should know it and have an opportunity to get their case squarely before the Government.

You will pardon the length of this communication, but the contents I consider important, and the documents quoted are clearly to the point. It is a matter that we intend to follow up. I showed a copy of Mr. Perkins's letter to the Union Pacific to Mr. James J. Hill, who considered the matter of sufficient importance to state that he would like a copy to give to President Taft and take the matter up with him.

To sum the whole matter up, I think the reclamation department requires a complete reorganization, and that many resignations would benefit the service. We have been patient for many years and inclined to cooperate with them, but I am inclined to think that hereafter we will be found with the public, supporting their demands for more competent, efficient, and better service from the department, which will be directly the opposite of what we have been in the past, as we have tried to support them in all their theories and have stood being put off patiently and have waited their time.

If, as I have heard stated, the reclamation work will be quite as important to the people of the United States as the Panama Canal work, I think, then, it is important that the Reclamation Service reorganize along more practical, businesslike lines than they are now working on.

I am just as much impressed with the high order of intelligence and good intentions and good work of some of the reclamation engineers as I am with the absurd and disinterested, careless, and incompetent methods of some of the others. There is no doubt that there are two distinct classes of engineers in the service.

I give you all this for what it is worth, knowing that you are greatly interested in the work, and I would appreciate any suggestions from you as to whether I am right in my conclusions, and along what lines you might think it best for me to work, so as to get matters along our line in the way of having contemplated projects promptly started and other projects completed as early as possible.

With your permission, I would like to send a copy of this letter to Mr. Newell, as I prefer to have a man know when I am criticising his department, so that if he is going to hear of it he may get it from me direct.

The territory that we are very much interested in, and which is more or less ready for advertising and settlement, and much needs both, is that which will be served by the Williston project, Buford-Trenton project, Yellowstone project, Milk River project, Sun River project, St. Marys project, Fort Peck project, Blackfeet project, and Okanogan project.

Yours, truly,

(Signed)

L. W. HILL, *President.*

Mr. PEPPER. I asked you whether this letter is one of the letters referred to in your testimony as having conveyed the initial complaint in this matter?

Mr. DAVIS. It is.

Senator FLETCHER. From whom, and the date of it?

Mr. PEPPER. That letter is from President Hill of the Great Northern Railroad to Senator Carter, dated September 16.

Mr. GRAHAM. A complaint to whom, by whom?

Mr. PEPPER. This is a letter to Senator Carter, and I do not care to make the responsibility of stating the contents of it.

The CHAIRMAN. It is admitted in evidence. Go on with your next locument.

Mr. PEPPER. I simply ask the witness whether this is one of the letters he referred to as having contained the complaint that came to the attention of the service?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. I hand you a letter dated September 23, 1909, purporting to have been written by the Director of the Reclamation Service to Mr. Thomas Cooper, Northern Pacific Railway Company, and ask you if that document is—

The CHAIRMAN. Do you desire to have it read?

Mr. PEPPER. No, sir; not at all.

The CHAIRMAN. Without any objections, it is admitted.

(The letter is as follows:)

[Cooperation. FHN/KLW.]

SEPTEMBER 28, 1909.

Mr. THOMAS COOPER,
Northern Pacific Railway Company, St. Paul, Minn.

DEAR SIR: Referring to our conversation of last evening, I at once took up the matter with Mr. E. T. Perkins on my arrival here and have looked over the correspondence and methods. The matter seems to be carefully conducted and the statement of receipts and expenditures kept in such a way that all vouchers can be checked, showing the expenditure of every dollar contributed by the various railroads.

The matter seems to have been initiated largely by Mr. Ballinger, the Secretary of the Interior, when he was in the Chicago office, hence the details were not referred to our Washington office. At his suggestion every western railroad was given an opportunity to contribute, and also various western organizations. The principal companies who have availed themselves are the Santa Fe, the Northwestern, Union Pacific, Southern Pacific, C. R. & N. Co., Oregon Short Line, etc. The matter was also brought to the attention of Mr. Eustis, of the Burlington, to be presented to the Northern Pacific and Great Northern, but I understand that Mr. Eustis declined on behalf of all three of the roads.

The expenditures are all made by Mr. Perkins and vouchers taken covering all details. I can assure you that Mr. Perkins does not profit financially, directly or indirectly, although it is understood that upward of \$100 per month may be utilized by him for personal expenditures, such as railroad fare, subsistence, etc., in connection with his personal supervision.

The method has been explained to you, I think, quite freely. Each person who attends to the lecture fills out a card, giving his name and address. Each person is also given a card, copy of which is inclosed, stating that for information concerning free homes on United States Government lands, apply to J. C. Waite, settlement agent, 777 Federal Building, Chicago, Ill.

As the names of the people are received, Mr. Waite sends to each a copy of the letter inclosed herewith, on which the name and address is inserted with typewriter. This letter you will note refers particularly to five projects on which government land is available; of these five you will note that three of them—namely, the Shooshone project, Wyoming, and the Huntley and Sun River projects in Montana—are in your territory, so that although the three northern roads do not contribute to the expense of discrimination is made in sending out information. On this point also I have advised Mr. Perkins that it would be wise to insert in the lectures lantern slides relating

1802 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

to all of these projects, so that there can be no claim of discrimination in favor of the roads who are contributing to the expenses.

There is also being prepared a series of statements concerning the reclamation projects, each pamphlet to be uniform in size with the others and prepared to fit into the ordinary envelope. Inclosed herewith is copy of the statement concerning the Truckee-Carson project. The material for these statements is prepared by the Reclamation Service, the manuscript is submitted to all persons interested for revision, and the printing is paid for by the railroads out of this general fund. This is modeled on the pamphlet printed by the Great Northern on the opening of the Sun River irrigation project, in Montana, of which we purchased, I think, 10,000 copies for distribution.

I will have a carefully prepared statement made regarding the whole matter, so that the records will be complete. So far as I can see, at present, there has been no intentional favoritism. In fact, in the material sent to the persons who attend the lectures there is, if anything, a bias toward the northern projects rather than the southern.

Referring to letter of September 22 from Mr. Morris Bien, acting director, it appears that the statement, "The expenses of this work are paid for by the Burlington road, etc.," is due to a mistake in transmittal of telegram from Mr. Perkins, which recites exactly the reverse.

Very truly, yours,

Director

[CC—Mr. D. Miller, Mr. E. T. Perkins.]

Mr. DAVIS. That appears to be a letter written by the director explaining the matter to Mr. Thomas Cooper of the Northern Pacific Railroad.

Senator FLINT. I think you can say that the gist of both those letters is that they were delivering lectures in Minnesota in reference to the raising of oranges in California.

Mr. PEPPER. I hand you a copy of a letter dated September 28, 1909, purporting to have been written by the Director of the Reclamation Service to Mr. E. T. Perkins, and ask you what that letter is, and offer it in evidence.

The CHAIRMAN. Do you want him to testify to its contents?

Mr. PEPPER. Not at all. Simply give some brief statement of it to the effect that it is a letter of instructions.

Mr. DAVIS. This is a letter from the director to Mr. E. T. Perkins, asking certain questions regarding these lectures.

Mr. McCALL. What is the date of that letter?

Mr. DAVIS. September 28.

The CHAIRMAN. If there is no objection, it is admitted.

(The letter is as follows:)

[Lectures. FHIN/KLW.]

SEPTEMBER 28, 1909

Mr. E. T. PERKINS,
Engineer in Charge, Chicago, Ill.

DEAR SIR: With reference to the lecture system and lecturer sent out in connection with it, I desire to have for official record and possible publication a concise statement covering the following facts:

- First. The origin of the work and the necessity for it.
 - Second. The authorization, oral or otherwise, of the work.
 - Third. The requests sent out to railroad officials or others for contributions.
 - Fourth. A list of the contributions made or promised.
 - Fifth. A copy of receipts and expenditures in such form that any money expended in the name of the Reclamation Service can be audited.
 - Sixth. Favorable or unfavorable comments.
 - Seventh. Statement of results so far accomplished, localities visited, and route laid out in future.
 - Eighth. Copies of correspondence with the Chicago, Burlington and Quincy or other officials of the Hill system.
 - Ninth. Copies of correspondence with St. Paul parties.
- Very truly, yours,

F. H. NEWELL, *Director.*

Mr. PEPPER. I hand you a copy of a letter, dated September 30, 1909, purported to have been written by the Director to Secretary Ballinger, and a copy of a letter of the same date from the Secretary to Mr. Perkins, inclosing a copy of the letter to Secretary Ballinger.

The CHAIRMAN. Any objection to that, Mr. Vertrees?

Mr. VERTREES. No, sir.

The CHAIRMAN. Those letters are admitted.

(The letters are as follows:)

[FHN-IMP.]

SEPTEMBER 30, 1909.

Hon. R. A. BALLINGER, *Seattle, Wash.*

MY DEAR MR. BALLINGER: I have returned to Washington after a trip over the Canadian Pacific Railway's irrigation system, east of Calgary. On my way east, I stopped at St. Paul, and met at the club Mr. L. W. Hill, president of the Great Northern Railway, and Mr. Thomas Cooper, of the Northern Pacific. In the course of conversation, Mr. Hill seemed to be very much disturbed about what he called the "black-tent" lectures which were arranged by Mr. E. T. Perkins.

It seems that Mr. Hill had been out to hear one of the lectures, in which no reference was made to irrigation systems along the Great Northern. The lecturer had told him that he did not then have any slides of that part of the country, and Mr. Hill was very indignant that any lecture series conducted in the name of the Reclamation Service should not mention his country. He said that he would ask his father, Mr. J. J. Hill, to take the matter up personally with President Taft, and make a complaint against Mr. Perkins, on the ground of favoritism and possible graft, although I do not understand where the graft charge comes in.

As I did not understand about the matter, I took it up the next day with Mr. Perkins, in Chicago, who told me that this "black-tent" arrangement was one which he had talked over personally with you and had your oral authorization to take up this lecture work, the one stipulation being that all of the railroads should be invited to come in on the same basis. This, Mr. Perkins said, had been done. Having been authorized by you, he had not taken the matter up with this office, and hence I was not aware of the arrangements made. I cautioned Mr. Perkins in the future to have all such matters of record, so that there could be no opportunity for misunderstanding; also, to see that the lectures which are being conducted make mention of all the projects, so that there can be no charge of discrimination.

As the matter seems to be one in which you have full information, I suggest that you give authority to the Reclamation Service to permit Mr. E. T. Perkins to obtain contributions from the western railroads and others interested, the money to be expended by him in a series of lectures and the accounts audited from time to time by the special fiscal agent or other qualified employee of the Reclamation Service and the correspondence to be placed on file, so that all details may be made public if necessary.

I have looked over the correspondence in Mr. Perkins's office, also the statement of receipt and expenditures, and believe that the matter is being carried on in accordance with your wishes and in a businesslike and economical manner and that excellent results are being obtained, so that I can see no reason for complaint. I do not believe that Mr. Perkins is profiting personally in any financial way, but, on the contrary, is giving his time and energy to the work.

Respectfully,

F. H. NEWELL, *Director.*

[FHN-IMP.]

SEPTEMBER 30, 1909.

Mr. E. T. PERKINS,
777 Federal Building, Chicago, Ill.

DEAR SIR: Inclosed herewith is copy of letter which I am writing to Secretary Ballinger. As stated in conversation with you, I think that it is a wise precaution for you to communicate with this office on all matters of this kind, giving us full information. In particular, I wish to emphasize that as a matter of business, as well as of courtesy, all communications with other government officials should pass, if possible, through the director, or if this is not convenient, copies should be furnished this office, so that I will be informed or can look the matter up quickly if the occasion arises.

Very truly, yours,

F. H. NEWELL, *Director.*

Mr. PEPPER. Here is a letter from Mr. Perkins to Secretary Ballinger dated October 6, 1909.

The CHAIRMAN. Any objection to that?

Mr. VERTREES. None.

The CHAIRMAN. It is admitted. Please hand that to the stenographers, so that they can put it in the record.

(The letter is as follows:)

[Publicity—P-99.]

OCTOBER 6, 1909

Mr. R. A. BALLINGER,
Hotel St. Francis, San Francisco, Cal.

MY DEAR MR. BALLINGER: Mr. Newell has just sent me a carbon copy of a letter which was written you under date of September 30. This lecture work to which Mr. L. W. Hill takes exception is part of the general work of publicity which was started here in April. Mr. Newell writes as though the details of this work would be fresh in your mind. As I am sure this can not be with the great number of important matters that occupy your time, I send you a carbon copy of a report which I have just made Mr. Newell on this subject.

As I state to Mr. Newell, this work is carried on entirely in accordance with precedent, and I believe will meet with your approval.

As for any possible charge of "graft," only my respect for you prevents a fitting characterization of such charge, and if this charge is made I am sure you will have the matter fully investigated and disproved.

There is one bright spot in the matter—it may lead to your stopping in Chicago on your way East.

Yours, very truly,

E. T. PERKINS

[Inclosures. CC-Mr. F. H. Newell.]

MEMORANDUM REGARDING VISIT OF SECRETARY BALLINGER, THURSDAY, MAY 6, 1909

The work of the publicity bureau in Chicago was outlined to the Secretary, and he appeared very much interested in it. He spoke of the recent visit of Mr. E. O. McCormick to his office and of their conversation regarding the settlement of lands along the Harriman lines. The Secretary stated that his position with regard to cooperation with the railroads in such work was that he would approve of such cooperation, provided that it was entered into with all of the roads jointly, but that he would not enter into any agreement looking to the exploiting of lands along any particular road; also provided that it did not involve any notable expense on the part of the service. The roads should get together in some organization or committee with which the service could cooperate. He suggested that the Association of Commerce might, through one of its committees, get the various interests together and assist in the work.

The Secretary was informed of the efforts being made to secure the use of rooms 501-502 in the federal building, and he was told of the urgent need for such additional quarters. He heartily favored the idea, and made a memorandum to take the matter up with Secretary MacVeagh, of the Treasury Department, upon his return to Washington. He stated that he would vigorously push the matter of having these rooms assigned to us.

The Secretary specifically approved of the plan of giving out information about all the public lands, including nonirrigated, Indian, mineral, etc., as well as the reclamation lands. He stated, however, that the work should be confined to giving out information, and that people should not be urged to take up homesteads. He approved giving out information relating to excess lands under the various projects, and suggested that we get in touch with local organizations, such as chambers of commerce, and distribute literature prepared by them.

(Signed) J. C. WATTS

Mr. PEPPER. Here is a letter of E. C. Perkins to the Director of the Reclamation Service, dated October 6, 1909, and backed by a number of exhibits referred to in the letter.

The CHAIRMAN. Any objection to that, Mr. Vertrees?

Mr. VERTREES. No, sir.

The CHAIRMAN. Then it is admitted.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
777-779 Federal Building, Chicago, October 6, 1909.

The DIRECTOR U. S. RECLAMATION SERVICE,
Washington, D. C.

DEAR SIR: Complying with your instructions of September 28, I desire to make the following statement of the cooperative publicity work and stereopticon lectures which are being directed by me.

Origin of the work.—In May Mr. Ballinger, Secretary of the Interior, visited Chicago and stated that a short time previously Mr. E. O. McCormick, assistant traffic director of the Harriman lines, called on him in Washington and suggested that the various western roads and the Reclamation Service cooperate in giving publicity to the reclamation work and the opportunities for home making on the irrigated lands.

Necessity for the work.—Mr. McCormick expressed the opinion that the lands of the Reclamation Service were not being settled as fast as were the lands irrigated under the Carey Act or exploited by private capital. He referred, also, to the enormous emigration from the United States into Canada, the emigrants being in most cases experienced farmers and men of means, whom it was desirable to encourage to remain in the United States. To offset this emigration and to put the reclamation work on an equal footing with other irrigation enterprises, so far as settlement was concerned more publicity was necessary.

Authorization.—Mr. Ballinger orally approved the plan suggested by Mr. McCormick and stated to me that such publicity work could be carried on provided all interests were invited to cooperate and the control of the work rested with us entirely, so that there might be no discrimination in favor of the interests contributing to the expense and the work would relate to the entire West. The details of this work were not submitted to the Secretary, but plans were gradually developed along the lines of similar cooperation work previously carried out at the Portland Exposition, the Jamestown Exposition, and elsewhere.

Request for contributions.—The first communication on this subject was written by me to Mr. E. O. McCormick May 13, and announced the Secretary's approval of his plan under the conditions previously stated, and suggested that Mr. McCormick take up the matter with interested parties. The matter was discussed pro and con until August, when promise of financial support was given and all railroads reaching the West were invited to participate in the work. The plan of the work being—

(a) Stereopticon lectures on the Reclamation Service at the various state and county fairs of this territory and the expositions in the large cities near here in the fall.

(b) Distribution of literature relating to reclamation projects. No literature that contains advertising matter is distributed.

(c) The obtaining of names of visitors to these lectures and future correspondence with them by our settlement agent in Chicago.

Contributions promised or made.—Based on a statement of expenses from the Payette-Boise Water User's Association during 1908, it was estimated that the cost of these lectures would approximate \$2,000 a month, and that to continue them for four months, or from August 15 to December 15, \$8,000 would be needed. The Chicago and North-western Railway has promised \$1,000, or 12½ per cent, of the estimated expense. The Atchison, Topeka and Santa Fe has promised \$2,000, or 25 per cent, of the estimated expense. The four Harriman roads promise the remaining 62½ per cent, or \$5,000, with the expectation of reducing this amount by contributions from various water users' associations and others.

The money thus contributed is paid me as needed by the representatives of the railroad on receipts stating the amounts received and purpose. For example—

"Received from W. J. Black, passenger traffic manager A., T. & S. F. Ry. Co., seven hundred and fifty dollars (\$750), account of expenses and salaries employees black tent publicity campaign."

This money is deposited as received in the Commercial National Bank of Chicago, to the credit of "publicity account," and at intervals statement of expenditures in detail are made to all contributing interests. To date (October 5) there have been received \$3,085 and expended \$2,323.86, leaving a balance in bank of \$761.14.

All accounts are paid by check on "publicity account," receipted bills in duplicate being obtained. In the disbursing of this fund I do not personally handle the money. I approve the bills; the checks are drawn by the stenographer and receive my signature. The only cash I handle is for miscellaneous expenses, which to date are about \$55.

1806 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

Favorable or unfavorable comments.—All comments have been favorable, except one item in the Minneapolis Tribune. This was more than offset by an article which appeared in the Minneapolis Journal of September 9. Copies of each will be obtained if possible and sent you.

Localities visited, future itinerary, results accomplished.—To date lectures have been delivered at Des Moines, Iowa; Hamline, Minn.; Milwaukee, Wis.; Galena, Ill.; Springfield, Ill.

The future plans as definitely arranged at date are Carlinville, Ill.; Carrollton, Ill.; Council Bluffs, Iowa; Omaha, Nebr.; Chicago, Ill.

Following is a summary of the work of the settlement agent's office for the month of September, as the result of the publicity campaign:

Number of names copied from passes.....	11, 540
Number of letters addressed and mailed.....	15, 735
Number of letters received.....	421
Number of personal replies written.....	386
Number of letters unanswered this date.....	35

A copy of the attached letter has been sent to each person who attended the lectures. Copies of the correspondence in this matter will be prepared and mailed you as soon as possible.

In conclusion, I wish to say that I have followed precedent, as stated above, in the general plan of work done. My correspondence explains all details fully and accounts are open for inspection. I feel that the more thorough any investigation may be the more commendation this work will receive, and the more plainly it will appear that publicity is being given the entire West, and that proper efforts are being made to settle our projects where settlers are most needed.

Very truly, yours,

E. T. PERKINS, *Engineer in Charge*

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
ROOMS 17 AND 18, No. 225 DEARBORN STREET,
Chicago, Ill., September 28, 1909

[Name of fair changed according to locality.]

DEAR SIR: Mr. R. A. Maynard, who had charge of the Reclamation Service exhibit at the Wisconsin State Fair at Milwaukee, reports that you attended one of his lectures on the work of this service in bringing under irrigation arid and semiarid lands in the West. I am glad to know of your interest in the subject, and wish to place before you the facilities of this office for gaining more information about the opportunities for home making on lands irrigated by the Government.

The United States is spending \$50,000,000 to reclaim by irrigation several million acres of land in thirty localities in the West. In five of these places, viz, the Truckee-Carson project, Nevada; the Shoshone project, Wyoming; the Huntley and Sun River projects in Montana, and the Belle Fourche project in South Dakota, homestead entries may be made on public lands by any qualified entryman and full title secured after five years' residence and the repayment of the actual cost of the irrigation system, which is prorated over the lands benefited. Full particulars about the lands, the climate, the crops, etc., will be sent you on request. While the public lands on the other reclamation projects have either been entered or withdrawn from entry pending the completion of the irrigation systems, there are large areas of deeded lands which may be purchased from the present owners and a water right acquired from the Government. I have no connection with the sale of these lands, but, if you desire, will take pleasure in assisting you to get in touch with parties having lands for sale.

If I can in any way further your interest in the Government's irrigated lands, please let me hear from you.

Very truly, yours,

Settlement Agent

[Copy.]

MEMORANDUM REGARDING VISIT OF SECRETARY BALLINGER, THURSDAY, MAY 6, 1909.

The work of the publicity bureau in Chicago was outlined to the Secretary, and he appeared very much interested in it. He spoke of the recent visit of Mr. E. O. McCormick to his office, and of their conversation regarding the settlement of lands along the Harriman lines. The Secretary stated that his position with regard to cooperation

th railroads in such work was that he would approve of such cooperation, provided it was entered into with all of the roads jointly, but that he would not enter into any agreement looking to the exploiting of lands along any particular road; also provided that it did not involve any notable expense on the part of the service. The idea should get together in some organization or committee, with which the service would cooperate. He suggested that the Association of Commerce might, through one of its committees, get the various interests together and assist in the work.

The Secretary was informed of the efforts being made to secure the use of rooms 1-502 in the federal building, and was told of the urgent need for such additional quarters. He heartily favored the idea and made a memorandum to take the matter with Secretary MacVeagh, of the Treasury Department, upon his return to Washington. He stated that he would push the matter of having these rooms assigned to the service vigorously.

The Secretary specifically approved of the plan of giving out information about all public lands, including nonirrigated, Indian, mineral, etc., as well as the reclamation lands. He stated, however, that the work should be confined to giving information, and that people should not be urged to take up homesteads. He approved giving out information relating to excess lands under the various projects, and suggested that we get in touch with local organizations, such as chambers of commerce, and distribute literature prepared by them.

J. C. WAITE.

[Copy. Publicity. A3. G-1718.]

MAY 13, 1909

Mr. E. O. McCORMICK,
Assistant Traffic Director, Union Pacific Company,
Southern Pacific Company, Oregon Short Line, and O. R. & N. Co.,
135 Adams Street, Chicago, Ill.

SIR: During a recent visit to this office of Secretary of the Interior, the Hon. Richard Ballinger, he informed me of your recent visit to his office in Washington, expressed his appreciation of the ideas you advanced, and instructed me to cooperate with the various railroad interests and the Chicago Association of Commerce in the settlement of lands on the various irrigation projects of the Reclamation Service.

I suggest the general plan of cooperation be as follows:

The Reclamation Service will endeavor to procure suitable rooms in the federal building, (Chicago (rooms 501-502 have been applied for), and will place in charge of this work Mr. J. C. Waite, with such assistance as may be needed. (See attached letter of C. J. Blanchard, statistician, U. S. R. S.) The rooms obtained (501-502, or outside quarters if necessary) will be fully equipped with advertising matter, photographs, and colored transparencies of western scenery. One of the rooms will be equipped as a lecture room, seating 40 or 50 persons, and stereopticon with colored slides will be used, short talks being given during the noon hour, late in the afternoon, and on certain evenings. It is also intended that lectures shall be given in or near Chicago when definite arrangements have been made for an audience of prospective settlers. After the lecture as much time as is necessary will be given in answering questions and furnishing detailed information. As we are specifically forbidden to incur expenses for travel, etc., the expense of these trips must be borne by our collaborators. The other expenses which can not be borne by us are:

Advertising pamphlets concerning various projects.

Colored lantern slides, photographs, etc., which any road may wish to be used in lecturing.

Incidental printing which would take too long to do if sent to Government Printing Office.

General incidental office expenses, such as time of assistants for emergency.

Stamps for advertising material that can not be mailed under government frank.

The sum of such expenditures will be immaterial when results are considered, and should not exceed a couple of hundred dollars a month in the beginning, if rooms 501-502 are obtained. As the work develops, the expense will increase accordingly, largely depending on number of lectures delivered outside our permanent quarters.

As this idea of cooperation is your idea, advanced by you to the Secretary and approved by him to you, can not you act as the representative of our allies and arrange the amount to be contributed by the various interested parties, the same to be transmitted to me through you?

Respectfully,

Engineer in Charge.

(Inclosure.)

1808 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

[Copy. Publicity expenses. A3. G-1718.]

JUNE 2, 1909

Mr. E. L. LOMAX,

G. P. A., Union Pacific R. R. Co., Omaha, Nebr.

SIR: Mr. McConough, your colonization agent, has requested that I give you in detail an estimate of the expenses referred to in my letter of May, 13, 1909, to Mr. E. O. McCormick, subject: "Publicity," file G1718. It will probably be best to discuss the matter by headings:

QUARTERS.

Application has been made for rooms 501-502 in the federal building. The Treasury Department, which has jurisdiction over the building, has offered us rooms 876-877 which would be very satisfactory, but the custodian of the building has "gone back" at the Treasury Department with the suggestion that we be given rooms 401-402 and a small adjoining room now occupied by the inquiry division of the post-office, which is to move to the first floor. These are splendid rooms and most suitable for a publicity bureau. At all events, it seems most probable that we will be given quarters in the federal building. If such quarters are not procured, outside rooms would have to be rented, which is not desirable.

PERSONNEL AND EQUIPMENT.

Mr. J. C. Waite will be in personal charge of this work. He will require a stenographer and one or two assistants; the salaries of Mr. Waite and his regular office force to be paid by the Reclamation Service. Room 402 will be the entrance room, which will be fitted up with chairs, tables, etc., also files of papers local to each project, shelves carrying general and special literature, and will be occupied by Mr. Waite and his assistants. Room 401 will be a lecture room, seating about 50 people, and around the walls will be fruits, grains, etc., from our irrigated lands. The small room adjoining 402 will be used by Mr. Waite and his stenographer as a private office, and here is where he will "cinch" matters with the prospective settler who has been interested by his assistants. All the expenses of equipping these offices are to be borne by the Reclamation Service, as are the expenses connected with the lectures, stereopticon slides, etc. Various colored transparencies will be exhibited in racks in front of the windows. The expense of these transparencies will also be borne by the Reclamation Service.

ADVERTISING.

The expenses of advertising will have to be borne by our collaborators. We will furnish pamphlets on the work in general and the laws governing homesteads and settlements. Separate pamphlets concerning each project will have to be issued by the parties interested in that particular project; for example, on the Harriman line there are 12 projects (on which the Reclamation Service has expended twenty-eight millions—Exhibit A). Each pamphlet issued would cost probably \$500 for an edition of 40,000. (See Exhibit B, Irrigation projects of the U. S. Reclamation Service—\$750 for 40,000; Exhibit C, "Questions and Answers," \$90 for 10,000; Exhibit D, "Opening of Sun River Irrigation Project, Mont.," issued by Great Northern Ry. Co., \$657.63 for 50,000.)

Each project should probably have one pamphlet a year, so with twelve projects this would be a monthly charge of \$500. A large part of these pamphlets could be distributed by us, either in rooms 401-402 or by mail under government frank; the remainder could be distributed through your own advertising department. These pamphlets would have to be edited by our project engineers before printing.

LECTURES.

The most efficient means of getting desirable settlers will be stereopticon lectures in that territory of the United States within six to twelve hours' rail ride of Chicago—Missouri, Iowa, Minnesota, Wisconsin, Illinois, Michigan, Indiana, Ohio, and western Pennsylvania. Six-tenths of the inquiries received in our Washington office are from this territory, and are referred to us for answer. Lectures can be arranged by the Chautauqua agencies, by the local station agents, farmers' granges, or, best of all, among the friends of settlers already on the irrigated lands. When we have assurance of an audience of interested hearers and prospective settlers, I would personally visit this community in company with Mr. Waite, address the audience officially as the engineer in charge Chicago office U. S. Reclamation Service, and give them an illus-

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1809

trated lecture on the government work in the West and the opportunities it offers to home makers. Mr. Waite would then visit these men in their homes and give them all the detailed information and data they wanted. One lecture a week, or possibly two, when two communities may be reached by one railroad trip, would be as much as could be devoted to this work. Each lecture would probably cost \$50 in fees and expenses—\$250 or \$300 a month.

INCIDENTAL PRINTING.

This would include signs to be posted in all of the city ticket offices of the various railroads, in the principal wholesale houses, in the association of commerce rooms, in the stockyards district, and in the town and country stations of the various railroads traversing the country about Chicago. Also cards to be mailed telling of this government bureau of information concerning public lands. This expenditure is estimated at \$75 a month.

COLORING LANTERN SLIDES.

Probably 25 slides each month, at \$1 each, would keep our lectures up to date—\$25. The expense of such photographs as may be furnished us for exhibition or distribution is not included in this estimate.

INCIDENTALS.

Employment of assistance as needed that can not be procured through the Reclamation Service on account of civil-service rules, \$60 a month.

Stamps for advertising materials that can not be mailed under government frank, \$15 a month.

Expenses that can not be covered by government vouchers, \$25 a month.

Résumé.

Incidental printing, per month.....	\$75.00
Colored lantern slides, per month.....	25.00
Services.....	60.00
Stamps, etc.....	15.00
Expense account.....	25.00
Expenses referred to in letter to E. O. McCormick.....	200.00
Lectures, 5 each month, at \$50 each.....	250.00
	450.00
Also pamphlets, 1 each month, 40,000.....	500.00
	950.00

Or, in round figures, \$1,000 a month—\$12,000 a year.

It might also be well to consider the desirability of having lecturers visit the various small expositions and county fairs—as was done last year by the representatives of the Payette-Boise Water Users' Association. Their work was as follows, on date of November 11, 1908:

Distribution of literature.

Number of state fairs visited.....	8
Number of copies, folder "Idaho Homes," distributed.....	102,000
Number of copies, folder "Results from Farms," distributed.....	10,000
Number of copies, folder "Official Catalogue," distributed.....	10,000
Number of copies, folder "Fresh Pastures" distributed.....	5,000

Literature on hand.

Folder, "Idaho Homes".....	28,000
Folder, "Fresh Pastures".....	21,000

Replies received to date.

By postals and letters as results of moving picture exhibit.....	5,467
Number of names listed with lecturers in the field.....	3,690
List of names received from Reclamation Service.....	5,500
	14,657

1810 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

Their expenditures to date, from August 20, 1908, were:

Printing and advertising.....	\$1,828.32
Office help.....	236.25
Stamps.....	55.00
Express and telegrams.....	318.14
Office expenses.....	14.60
Traveling expense.....	73.95
Office fixtures.....	10.00
Tent (black tent for lecture purposes).....	348.00
Lecture expenses, D. R. Hubbard and party.....	2,849.89
Omaha exhibit.....	63.57
Unpaid bills on file.....	1,215.28
Total.....	7,012.91

An average expenditure of over \$2,500 a month—an amount that could be very materially reduced, I am sure, as it would appear that it cost over a dollar for each postal or letter of inquiry. Last week, without publicity, we had over a hundred and twenty-five callers—expense \$12. To-day as I passed through the hallway, I noticed 10 men here at that time.

Respectfully,

Engineer in Charge

(Inclosures—4.)

(Copy.)

OMAHA, NEBR., June 5, 1909

Mr. E. O. McCORMICK,
Assistant Traffic Director, U. P. R. R.,
155 Adams Street, Chicago, Ill.

DEAR SIR: Referring to your letter of May 20, transmitting letter from Mr. E. T. Perkins, engineer in charge of U. S. Reclamation Service, and copy of one from Mr. Blanchard. I have had the matter up personally very thoroughly with Mr. Perkins in his office in Chicago, and I am certain it is the best way to work up enthusiasm and colonize these government projects. Mr. Perkins and I have itemized the probable expenses, as follows:

Incidental printing, per month.....	\$75.00
Colored lantern slides, per month.....	25.00
Services.....	60.00
Stamps, etc.....	15.00
Expense account.....	25.00

Expenses referred to in letter to E. O. McCormick, May 13, 1909.....	200.00
Lectures, 5 each month, at \$50 each.....	250.00

Also pamphlets, 1 each month, 40,000.....	450.00
	500.00
	950.00

or, in round figures, \$1,000 a month; \$12,000 a year.

This would not only cover the expenses of the Chicago office, but it would also cover the expenses of lectures to be delivered by Mr. Perkins personally, supplemented by his assistant, Mr. Waite, at any point within six to twelve hours of Chicago, as mentioned in his expense statement. Also it includes a pamphlet on each of the twelve projects on the Harriman lines.

In connection to this, Mr. Perkins says we can run a black tent at the different state and county fairs for three months, namely, August, September, and October, for about \$8,000. Of this amount we hope to get at least one-half back in the way of subscriptions for the water-users' associations of the projects and the settlers' association on and near the projects who will be benefited by the lectures.

I have, therefore, to recommend that we take hold of this proposition at once, and I respectfully ask for an appropriation, 1909-10, as follows:

Advertising for colonization of government projects.

Yearly expense as itemized.....	\$12,000
Expenses "black tent" advertising for August, September, October, November, and December, 1909.....	8,000
Total.....	20,000

Yours, truly,

(Sd.) E. L. LOMAX.

[GLMcD-M. Inclosures returned. Letter from Mr. Blanchard. Letter from Mr. Perkins.]

[Copy.]

PAYETTE-BOISE WATER USERS' ASSOCIATION,
Boise, Idaho, June 10, 1909.

E. T. PERKINS, *Engineer in Charge, U. S. R. S., Chicago, Ill.*

DEAR SIR: In re your G-1718 to the president of the Payette-Boise Water Users' Association. Having succeeded Mr. Lowell as president, this letter was sent to me for reply.

Our equipment consisted of 1 lined black tent, 35 x 70, with walls and top all black. Our seating capacity was 350 to 400 people. Our operator furnished his own lantern. We paid our operator \$18 a week and expenses. We started out with 5 persons and ran something over a month in this way. They consisted of an exhibit manager, a lecturer, an operator, and 2 barkers, who distributed literature also. We paid our lecturer \$125 per month and expenses, our exhibit manager \$100 per month, and during the latter part of the campaign we found it more convenient and less expensive to procure our barkers in the several localities where we exhibited. We usually paid them \$2 per day. We exhibited at the state fairs of Iowa, Minnesota, Wisconsin, Kansas, Illinois, Missouri, The American Royal Live Stock Show at Kansas City, and the Texas State Fair, also at the National Corn Exposition at Omaha later.

Were we to undertake this campaign again with reference to benefit to the Payette-Boise project we would give more attention to South Dakota, Nebraska, Kansas, and Oklahoma, also Colorado. We would also include Missouri and Iowa, but think it doubtful if our project would receive enough benefit from Minnesota and Wisconsin to warrant our efforts there. Minnesota has a great fair, but the officers were somewhat niggardly and their attitude was not friendly to our exhibit owing to the fact that they regarded it as a real-estate show. Then that country is being terrifically drummed for Canada lands. There are several fairs in Kansas, Nebraska, and possibly Oklahoma, about equal to the state fairs, which I think should be included in an itinerary if the dates were properly related.

We distributed something over 100,000 pieces of our preliminary literature entitled "Idaho Homes," a copy of which I hand you herewith. We received inquiries from about 19 per cent, or about 19,000 people, to whom we sent our pamphlet entitled "Fresh Pastures." This contained a card asking for more specific information on certain subjects. We sent out several thousand bulletins from these second inquiries. A number of people have come here who say that they came as a direct result of this advertising.

There is a very strong general sentiment toward Idaho, and Mr. Newell, when here, said that a very large proportion of the inquiries coming to the Washington office seemed to prefer Idaho. Of course you know the Carey Act people have been doing a great deal of advertising and they are entitled to considerable credit for this Idaho movement. The benefit of large fairs, such as state fairs, is that the people gather from all parts of their respective States and adjoining States, and they are usually the leading people of their communities.

The exhibit was unique and seemed to be very attractive and interesting. The fact that it was unique was the feature that made impression on visitors at the fair. They always see fruit, cereals, livestock, poultry, and machinery and balloon ascensions, etc., at the fairs, but none of them had ever seen a moving-picture exhibit of this character, so that when they returned to their homes they undoubtedly told that to their neighbors, thus disseminating the advertising all over the State.

1812 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

We had no exhibits of fruits, cereals, or other products, and to carry them would involve considerable inconvenience and great expense.

We are very glad to be advised that if this work is carried out the Payette-Boise project will have its full share of the advertising, for I assure you that this project can make good to all who come here to build homes.

Yours, cordially,

(Signed) D. R. HUBBARD, *President*

[Copy. AW-8.]

CHICAGO, ILL., July 29, 1909

Mr. E. T. PERKINS,

*Manager Home Seekers' Land and Information Bureau,
Old Colony Building, City.*

DEAR SIR: You are no doubt interested in reaching the country people of the Central States for the purpose of interesting them in irrigated lands in the West. For this reason we take the liberty of mailing you to-day, under separate cover, copy of our complete catalogue of 4,768 country weekly newspapers, the map with same showing you at a glance the territory we cover, and how thoroughly we cover it.

The papers are divided into 22 separate lists, as indexed on page 4 of catalogue. You can take up any one list or any combination of these lists that you may prefer. We can handle your copy in same, either reading matter or display, at less cost to you than the electrotypes themselves would amount to were you to place the order with each individual paper. *For the past eleven years we have handled three-quarters of the publicity work carried on in this country by the Canadian government, and have been instrumental in sending into western Canada each year during that time from forty-five to sixty thousand American farmers with their families.* We have also done a great deal of advertising on Texas and Florida lands. Every campaign of land advertising we have undertaken during the past 10-12 years has been a most unqualified success.

We would like very much to have an opportunity to go over this entire matter with you at any time most convenient to you. This will entail no obligation whatever on your part.

May we not be favored with a response?

Yours, very truly,

(Signed) WESTERN NEWSPAPER UNION.
Per ALF. WASHINGTON.

[Copy. Publicity. A3. P-99.]

AUGUST 10, 1909

Mr. P. S. EUSTIS,

Passenger Traffic Manager, C. B. & Q. Ry., Chicago, Ill.

SIR: Inclosed is carbon of a letter just sent to Mr. E. L. Lomax, general passenger agent of the Union Pacific Company. The Harriman roads have agreed to support a lecture tour on Reclamation-Service projects as indicated in this letter, but it is necessary, from our point of view, that all Reclamation-Service projects be covered, and of course they are not willing to bear the expense of advertising projects on other systems. To overcome this perfectly proper objection of theirs, I would request that you agree to bear a proportionate expense of this lecture tour and that you notify me at your earliest convenience as to your decision in this matter.

Respectfully,

Engineer in Charge

(Inclosure.)

[Copy. Publicity campaign. A3. P 99.]

AUGUST 9, 1909

Mr. E. L. LOMAX,

G. P. A., Union Pacific R. R. Co., Omaha, Nebr.

DEAR MR. LOMAX: I have just had a most satisfactory conference with Mr. Westdahl and I believe we have a thorough understanding as to how this black-tail

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1813

project should be conducted. We estimate that the original outfit will cost approximately \$1,000, which will be distributed as follows:

1 No. 1007 motiograph with moving-picture head.....	\$200.00	
1 gas outfit, with equipment.....	43.75	
2 15-foot screens.....	14.00	
Trunk for carrying outfit.....	42.50	
Extras.....	20.00	
		\$320.25
1 black tent, 30 by 70 feet.....	275.00	
Chairs, 500, at 75 cents each.....	375.00	
Electric fans, 4, at \$15 each.....	60.00	
		710.00
Total.....		1,030.25

The services of the following men will be necessary:

	Salary.	Traveling expenses.	Incidental expenses.	Total.
Manager.....	\$150.00	\$150.00	\$50.00	\$350.00
Operator.....	112.50	100.00		212.50
Lecturer.....	150.00	150.00		300.00
Door and car keeper.....	80.00	70.00		150.00
Property man.....	80.00	70.00		150.00
Man in charge of literature.....	80.00	70.00		150.00
				1,312.50

The expenses of maintenance will approximate as follows:

Installing, dismantling, drayage, wiring, etc., average 3 times per month, \$125.....	\$375.00	
Expenses incurred by Mr. Perkins in going to and from Chicago to exhibits.....	100.00	
Postage per month.....	25.00	
Telegrams per month.....	25.00	
Railroad fare (5 employed) per month.....	75.00	
		\$600.00
Printing and advertising:		
Passes for admission, 60,000, at 60 cents per M.....	36.00	
Placards and posters for windows, announcing location of exhibits, 6,000 at.....	60.00	
		96.00
Monthly total.....		2,008.50

(No estimate is made for freight charges.)

Mr. Westerdahl will explain to you the method by which we arrive at these estimates.

The following conditions I consider necessary for the success of this project and I would request your consent to this method of handling the matter.

1. I must have exclusive control in handling matters relative to black tent exhibit of the Reclamation Service.

2. Funds are to be handled in an expense account to be deposited on requisition and to be drawn upon as necessary. At the end of each month vouchers are to be turned in for credit against this account. Vouchers to be made out on government blanks. I am to pay everything in connection with the expenses of this undertaking. If, however, any amounts are paid out of this fund I should be notified at once, with copy of voucher.

3. I will make arrangements for a competent manager, whose duties are to select space for location of tent at each fair, to attend to the installation and dismantling of the same, to arrange seats, etc. Also to attend to the moving of the paraphernalia from fair grounds to car and arrange for the movement of the car from fair to fair and have general charge of the enterprise. I will also make arrangement for the employment of a lecturer, for the purchase of a lantern and outfit; also arrange for the employ-

ment of an operator; arrange for the employment of two doorkeepers, one of whom will also act as car keeper, and one man to be in charge of literature, etc.

4. Lecture hours: Hours from 10.30 a. m. to 5.30 p. m., inclusive. Each lecture to start on the half hour with half hour intervening, which time is to be occupied in distributing literature and answering personal inquiries.

5. I will make arrangement to get out a form of pass—same to be a good lithographic pass—to be used by people for admission, to contain the name and address of each person and to be distributed through the Congressmen, mayor, city council, associations of commerce, and merchants.

6. Arrangements should be made for latest-pattern automobile car to be used exclusively from beginning of lecture tour to ending, for the handling of all paraphernalia in connection with this lecture tour, with signs on sides announcing property of and object.

7. Only reclamation literature to be used, to be distributed judiciously, and a careful record kept of the number of pieces issued.

8. In consultation with Mr. Westerdahl, I am to furnish itinerary and the United Pacific to handle the press matters; that is, publicity through the newspapers. As to open dates, after conferring together, we have decided that the greatest success can be obtained by exhibiting at good, substantial county fairs in Indiana, Illinois and Iowa instead of the larger expositions in the cities.

9. I will prepare a poster or placard announcing the location of exhibits, etc., to be placed in prominent business houses and other conspicuous places.

10. I will make arrangements for the purpose of two government flags and Reclamation Service flags, as needed.

11. I will arrange for the painting of map showing all reclamation projects on each side of doorway of tent.

12. I will arrange for a large sign for announcing that this is a United States Reclamation Service exhibit; two additional signs containing the same information to be placed, one on each side of railway car carrying this exhibit.

13. Tentative itinerary: At Des Moines, Iowa, August 27 to September 3. September 4 and 5 to be used in moving exhibit to St. Paul. At St. Paul, Minnesota, September 6 to 11. At Milwaukee, Wis., September 13 to 17. Open dates from September 17 to 30. At Springfield, Ill., October 1 to 9. Open dates October 10 to November 14. At Council Bluffs, Iowa, National Horticultural Show, November 15 to 20.

(Tent will not be in use from November 20 to December 18, as the lectures will be given indoors at the United States Land and Irrigation Exposition, Chicago, November 20 to December 4, and at the International Live Stock Show, Chicago, from November 27 to December 10, and at the Corn Exposition, Omaha, from December 6 to December 18. Relative to the corn exposition, however, same is indefinite; if space can be arranged for in the exposition building, tent will not be in use; otherwise outside space must be arranged for tent between December 6 and 10.)

I will be glad to call the publicity campaign of the Reclamation Service to the attention of the Hill and Santa Fe systems with a view of obtaining their cooperation and a proportionate contribution of money from them, but as for soliciting subscriptions from the water users' associations or from local boards of trade or associations of commerce, the Washington office will not permit me to do this.

I would request that you authorize Mr. Neimyer to transmit to me \$2,000, to be used in purchase of equipment and current expenses of the project for the first fifteen days; the amount to be carried in suspense account as previously noted and receipt duly rendered for expenditures.

While in Washington I procured authority to proceed with the publication of standard pamphlets which we have discussed. I have now a large supply of literature on hand relating to your projects and will use this for distribution until the standard pamphlet is turned out by Rand, McNally & Co. Instead of having one pamphlet issued each month, I think it would be better to have all the pamphlets published as soon as possible, so that we can furnish information to inquirers concerning any of the projects on your system. The expense will be the same, though it will not extend over such a long period of time and the results will be satisfactory I am sure. An agreement in this matter will then clear up all points in question between us. A record will be kept of the number of inquirers concerning each project.

At your earliest convenience, please forward me letters of authorization to proceed in accordance with our general understanding; these letters to be on file as a matter of record.

Respectfully,

E. T. PERKINS, *Engineer in Charge*

[Copy. Publicity campaign. A3. P-99.]

AUGUST 10, 1909.

Mr. W. J. BLACK,
Passenger Traffic Manager, Santa Fe System, Chicago, Ill.

SIR: Inclosed is carbon of a letter just sent to Mr. E. L. Lomax, general passenger agent of the Union Pacific Company. *The Harriman roads have agreed to support a lecture tour on Reclamation Service projects as indicated in this letter, but it is necessary from our point of view that all Reclamation Service projects be covered, and of course they are not willing to bear the expense of advertising projects on other systems.* To overcome this perfectly proper objection of theirs, I would request that you agree to bear proportion of the expense of this lecture tour and that you notify me at your earliest convenience as to your decision in the matter.

Respectfully,

Engineer in charge.

[Inclosure.]

[Copy. Publicity. A3. C-1893.]

AUGUST 11, 1909.

To all project engineers:

SIR: Arrangements are now being completed for a series of lectures on the irrigation projects of the United States Reclamation Service at the various county and state fairs of Indiana, Illinois, Iowa, Minnesota, Wisconsin, and Michigan, for the purpose of obtaining settlers on our reclaimed lands and of arousing a general interest in the West among the farming communities of these States.

The general plan consists of a black tent 30 feet by 70 feet, seating some 350 people, lectures to be given from 10.30 a. m. to 5.30 p. m. on the half hour, lasting approximately thirty minutes; the intervening thirty-minute periods are to be used in answering questions, distributing literature, and taking a record of the inquirers. Arrangements are being made to keep a record of the names and addresses of all persons who attend the lectures, even if they do not remain between lectures to answer questions.

I would request that you have immediately forwarded to me, 777 Federal Building, Chicago, Ill., charges prepaid, such literature concerning your project as you wish distributed. We will distribute literature issued by the Reclamation Service, by the water-users' associations, local boards of trade, or commercial associations.

I would request that you take prompt action in this matter.

Respectfully,

Engineer in Charge.

[Copy. 1451.]

OMAHA, NEBR., August 12, 1909.

Mr. W. G. NEIMYER,
General Agent, 120 Jackson Boulevard, Chicago, Ill.

DEAR SIR: Please note attached copy of my letter of even date, 1451, to Mr. E. T. Perkins, Department of Interior, engineer in charge, United States Reclamation Service, 777-779 Federal Building, Chicago, Ill., referring to the payment to Mr. Perkins of \$1,400 for the purchasing of equipment and estimated weekly expenses of carrying on the black-tent publicity campaign, United States Reclamation Service.

Will you please arrange to furnish Mr. Perkins with this amount as well as from time to time, presumably each week, as necessary, sums to the amount of \$400 per week for the carrying on of this publicity campaign for a period of sixteen weeks. The total expenses to be in aggregate \$8,000.

Make voucher covering these amounts as follows:

Make voucher favor E. T. Perkins, Chicago, pay W. G. Neimyer, reading:

"Amount due for the purchasing of equipment, salary, and expenses of moving-lecture exhibition in advertising irrigated lands under the various United States Reclamation projects during the month of August, \$1,400.00."

Attach receipt to each of these vouchers, and after making your record and claiming credit, forward these vouchers to Omaha in the usual manner.

Yours, truly,

(Signed) E. L. LOMAX.

[GWW, LA, CC to E. T. Perkins.]

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[Copy. 1451.]

OMAHA, NEBR., August 28, 1909.

Mr. S. K. HOOPER,

G. P. A., D. & R. G. R. R. Co., Denver, Colo.

DEAR SIR: In regard to "black tent publicity" work on United States reclamation districts that is to be done at various state and county fairs, I am pleased to give you the exact data:

You are interested in the Uncompahgre Valley project and Grand Valley project of Colorado and the Strawberry Valley project in Utah. Arrangements have been made with the United States Government whereby a special series of lectures upon and stereoptican pictures of the reclamation work on the Uncompahgre, Grand, and Strawberry Valley projects can be presented every day and full publicity given to the advantages the districts hold out to the settlers with all the information, conditions, etc., made by the Government for the settlement, price of land, price of water, etc.

You are asked to participate in the fund necessary to have the Government give these shows to the extent of \$3,000, \$2,250 of which goes to the publication of a government pamphlet each of the Uncompahgre, Grand River, and Strawberry Valley projects. The cost of these pamphlets will be about \$750 for 50,000 of 72 pages of printed matter, in which mention will be made of the Denver and Rio Grande, and there will be a map showing the projects and how to get there on the Denver and Rio Grande. The other \$750 is to be used to defray the pay roll and expenses of the men engaged in giving the show, the setting up and taking down of the show, and the freight charges on the shipment of the car containing the exhibit from town to town.

These exhibits for the next three months are, per month:

Pay roll and expenses.....	\$1,312.50
Setting up, taking down (and freight charges on car containing exhibit)	
exhibit for each fair, three fairs per month.....	600.00
	<hr/> 1,912.50

You are earnestly requested to come in on the project and lend us your assistance. The United States Government has appropriated over \$62,000,000 and has already expended about \$50,000,000 on these various reclamation districts, but to date—for some reason or other, probably because matters have not been pushed as hard as they should have—few, if any, settlers have located in these districts, and it is possible, if proper encouragement is not given the Government in this work, that there may be no more appropriations obtained, which would be a great loss to the people of the country as well as to the railroads.

For your information, when the subject was broached to the Harriman lines, it was decided that we would undertake the exploitation of the various projects upon the Harriman lines with the intention of confining the exhibits entirely to the Harriman lines, but it was finally determined to give all of the lines interested in these reclamation projects an opportunity to come in with us and defray the heavy expense which a traveling exhibit of this kind naturally entails, which expense you will note from the above estimate is about \$2,000 per month.

If you desire to come in, which I hope you will do, kindly send your check for the \$3,000 to Mr. E. T. Perkins, engineer in charge, United States Reclamation Service, Federal Building, Chicago, referring to this letter, copy of which Mr. Perkins has, kindly advising me when same has been done.

Yours, truly,

(Signed) E. L. LOMAX.

[L-B CC to E. T. Perkins.]

[Copy. Publicity campaign. P-99. A3.]

SEPTEMBER 13, 1909

Mr. W. W. BROUGHTON,

Traffic Manager Great Northern Railway,
St. Paul, Minn.

DEAR MR. BROUGHTON: Your telegram of the 11th was duly received, as was copy of a telegram from Mr. L. W. Hill to our Washington office.

I assure you that I am very glad to note these evidences of your interest in our black tent publicity campaign. It has been a keen disappointment to me that you did not participate in this work, and I hope now that it has been brought to your attention

you will see your way clear to aid us. The general offices of the Burlington road, here in Chicago, have always been very kind in acting as our intermediary when we had requests to make on the Great Northern or the Northern Pacific and we have learned to appreciate their cooperation and to trust them implicitly. Under date of August 10 I wrote to Mr. P. S. Eustis, passenger traffic manager C., B. & Q., Chicago, requesting his cooperation in the support of a lecture tour on Reclamation Service projects and personally requested that he would present the matter to the Great Northern and the Northern Pacific roads. After a few days' consideration Mr. Eustis telephoned me that the Burlington road did not care to cooperate in this series of lectures, as he did not believe it would be effective advertising. He further stated that he would not recommend it to the Great Northern nor the Northern Pacific and intimated that under these conditions it would be useless for me to carry the matter to you personally.

I should like to present the matter to you personally now and see if your decision may be different from that of Mr. Eustis. During the winter Mr. E. O. McCormick, assistant traffic director of the Harriman lines, called on the Secretary of the Interior, Mr. Ballinger, to discuss the advertising and settling of the western lands. Some time afterwards the Secretary was in Chicago and authorized me to proceed with the cooperative scheme of advertising and settling these lands. As the Reclamation Service has no funds whatever for advertising, the plan was that the various railroads and other interests of the West would furnish the funds and the Reclamation Service would do the work. Invitations to participate in this work were extended to the Harriman roads, the C. & N. W., the A., T. & S. F., the Hill lines (through the Burlington), the D. & R. G., and the Salt Lake road. We received promises of cooperation from the Harriman roads, the Northwestern, and the Santa Fe, and in consequence are running projects along these systems the preference in our lectures and distribution of literature. Inclosed is a carbon copy of a letter addressed to Mr. Lomax, of the Union Pacific, which will explain to you quite fully the plans under which we are working.

When my request was made of Mr. Eustis, it was estimated that the proportion of expense which each one of the Hill roads should bear should be \$1,000. This campaign was destined to last four months; it has already been underway some three weeks and we have obtained the names of some twelve to thirteen thousand prospective settlers and are carrying on active correspondence with them through our settlement agency.

If this matter appeals to you, and I certainly hope that it does, because I desire nothing better than to aid in settling the great Northwest, I should be very glad to have one of your representatives call upon me at my office to go into the matter fully.

Very truly, yours,

Engineer in Charge.

Inclosure.

[Copy.]

DEPARTMENT OF THE INTERIOR,
Washington, September 16, 1909.

Mr E. O. McCORMICK,
Assistant Traffic Director, 135 Adams street, Chicago, Ill.

DEAR SIR: I am in receipt of your letter of August 27, 1909, referring to interview in the interest of cooperation between the Government and private interests in the settlement of reclaimed arid lands in the West, and am glad to learn that the western railroads are preparing to assist in the dissemination of information with reference to this matter.

* * * * *
Very respectfully,

(Sgd.) R. A. BALLINGER,
Secretary.

[Copy.]

THE SECRETARY OF THE INTERIOR,
Washington, September 18, 1909.

DEAR SIR: I have your letter of September 14, and I thank you for the information therein contained. The department has been of the opinion for some time that it would further the interests of the Reclamation Service if lands within a proposed project could be withdrawn from settlement or disposition in any way until water was

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available. The question of shortening the period of residence required on an entry within a reclamation project is one which would require very careful consideration and legislation would have to be had before any change in the present requirements could be made.

The department has under consideration the question of affording relief to entrymen who have made satisfactory final proof on their entries within projects, similar to the case cited by you, and action in this respect will be had as soon as the scope of the authority of the department can be determined upon.

Very truly, yours,

(Sgd.) R. A. BALLINGER, *Secretary.*

Mr. E. O. McCORMICK,

Assistant Traffic Director, 135 Adams street, Chicago, Ill.

[P-99. Publicity campaign.]

SEPTEMBER 21, 1909.

Mr. A. M. CLELAND,

G. P. A. Northern Pacific R. R., St. Paul, Minn.

DEAR MR. CLELAND: In accordance with our conversation of September 20, I send you carbon copy of letter to E. L. Lomax, G. P. A. Union Pacific Railroad, date of August 9, 1909. Under date of August 10 I wrote to Mr. P. S. Eustis, P. T. M. C., B. & Q. Railroad, Chicago, Illinois, requesting his cooperation in the support of a lecture tour on Reclamation Service projects, and personally requested that he would present the matter to the Great Northern and Northern Pacific roads. After a few days' consideration Mr. Eustis telephoned me that the Burlington road did not care to cooperate in this series of lectures, as he did not believe it would be effective advertising. He further stated that he would not recommend it to the Great Northern or the Northern Pacific, and intimated that under these conditions it would be useless for me to carry the matter to you personally.

During the winter Mr. E. O. McCormick, assistant traffic director of the Harriman lines, called on the Secretary of the Interior, Mr. Ballinger, to discuss the advertising and settling of the western lands. Some time afterwards the Secretary was in Chicago and authorized me to proceed with the cooperative scheme of advertising and settling these lands. As the Reclamation Service has no funds whatever for advertising, the plan was that the various railroads and other interests of the West would furnish the funds and the Reclamation Service would do the work. Invitations to participate in this work were extended to the Harriman roads, the C. & N. W., the A., T. & S. F., the Hill lines (through the Burlington), the D. & R. G., and the Salt Lake road. We received promises of cooperation from the Harriman roads, the Northwestern, and the Santa Fe, and in consequence are giving projects along these systems the preference in our lectures and distribution of literature. When my request was made of Mr. Eustis it was estimated that the proportion of expense which each one of the Hill roads should bear should be \$1,000. This campaign was destined to last four months; it has already been under way some three weeks, and we have obtained the names of some twelve to thirteen thousand prospective settlers and are carrying on active correspondence with them through our settlement agency.

If this matter appeals to you—and I certainly hope it does—I shall be pleased to have your agreement to contribute \$1,000 for the Northern Pacific. Our lecture tour will be continued up to about December 15 or 18. Our definite dates are: Galena, Ill., September 21-24; De Kalb, Ill., September 25-29; Springfield, Ill., October 1-9; Carlinville, Ill., October 12-15; Carrollton, Ill., October 19-22; National Horticultural Congress, Council Bluffs, Iowa, November 15-20; United States Land and Irrigation Exposition, Chicago, Ill., November 20 to December 4; National Live Stock Exposition, Chicago, Ill., November 28 to December 5; National Corn Exposition, Omaha, Nebr., December 6 to December 18.

Our tentative dates are: Cedar Rapids, Iowa, October 23-25; Vinton, Iowa, October 26-28; Waterloo, Iowa, October 29-30; Marshalltown, Iowa, November 1-3; Mason City, Iowa, November 6-9; Fort Dodge, Iowa, November 12-13.

With this itinerary and the use of our pass (par. 5, p. 3, letter to E. L. Lomax, August 9, 1909), we ought to get a splendid list of prospective settlers.

The list of names which we receive will later be divided among the railroads, in accordance with the amount of their subscription and the needs of the Reclamation Service for settlers on certain projects.

I would be glad to hear from you at your earliest convenience on this subject.

Very respectfully,

E. T. PERKINS,
Engineer in Charge.

[CC-n Mr. W. W. Broughton, Mr. P. S. Eustis.]

Mr. PEPPER. This appears, does it not, Mr. Davis, to be an answer to the letter requesting a reply to the questions previously submitted by the director?

Mr. DAVIS. It seems to be.

Mr. PEPPER. This is a letter of October 8, 1909, from Mr. Newell, the director, to President Hill, of the Great Northern.

The CHAIRMAN. Any objection to that?

Mr. VERTREES. No, sir.

The CHAIRMAN. It is admitted.

(The letter is as follows:)

FHN—GFS.]

OCTOBER 8, 1909.

Mr. LOUIS W. HILL,
*President Great Northern Railway Company,
St. Paul, Minn.*

MY DEAR MR. HILL: A copy of your letter of September 16 to Hon. Thomas H. Carter has been forwarded to me. It refers to the so-called "black tent" lectures, concerning which we had a conversation at the St. Paul Club on September 27. I have looked into the matter and find that it is one of those details which apparently was talked over informally between Secretary Ballinger and Mr. Perkins and was not made a matter of record with the Reclamation Service. I have written to Secretary Ballinger asking about the matter and have called upon Mr. Perkins for a formal report, although in this he is presumably not under my orders.

I note in particular the following statement:

"To sum the whole matter up, I think the Reclamation Department requires a complete reorganization, and think that many resignations would benefit the service. We have been patient for many years and inclined to cooperate with them, but I am inclined to think that hereafter we will be found with the public, supporting their demands for more competent, efficient, and better service from the department, which will be directly the opposite of what we have been in the past, as we have tried to support them in all their theories, and have stood being put off patiently and have waited their time.

"If, as I have heard stated, the reclamation work will be quite as important to the people of the United States as the Panama Canal work, I think, then, it is important that the Reclamation Service reorganize along more practical, businesslike lines than they are now working on."

I wish that you would give me a little more definitely your ideas, even though these may not be flattering or even agreeable to me. I am eager for constructive criticism, even though I may be the person whose resignation you may have in mind. I have devoted my life to building up this work, from the initiation of stream measurements in 1888 and "investigations to the extent to which the arid region might be reclaimed," and hope and intend to remain with it as long as I can properly do so, devoting all of my energies to what I believe to be the best interests of the country, without any personal gain, directly or indirectly, excepting through my salary.

You appreciate, of course, that government business is fundamentally different from that of a corporation. Employees can be obtained only through competitive civil-service examination and can be removed only after filing definite charges. The salaries paid to men occupying the higher positions are, as a rule, less than those paid by corporations, and there is a strong temptation for such men to leave the public service when they become most valuable to it. These are conditions which must be met, whether they are good or bad.

Resignations are unfortunately taking place very rapidly and are usually the men who can least be spared. The places of these men are filled largely by promotion because a man who has not had many years of training in the public service is almost useless when he attempts to transact business without a thorough knowledge of the minor details as to how to get things done economically and quickly. I could cite almost innumerable instances of men who have succeeded in corporate business who have made rank failures in the public service because they did not understand the so-called "red tape" or governmental systems, which bear the same relation to business that barbed wire fences do to an agricultural country. A man who knows the roads and gates can go through such a country quickly, while a stranger becomes hopelessly entangled. In short, for success in the public service it is necessary to a large extent, to get relatively young and untried men and educate them in the business.

The point, however, on which I would like particular information is that "We have been patient for many years and inclined to cooperate with them," etc., also "As we

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have tried to support them in all their theories." I should be glad to have a better understanding of this, especially as to where we have, in your opinion, not been successful.

It should be pointed out of course that the Reclamation Service is simply that branch of the Department of the Interior which carries out the orders of the Secretary in surveying and examining and later in constructing and operating irrigation works. It has no power of initiative or of execution excepting as specifically and definitely conferred from time to time, usually at periods of every three months. Its expenditures are audited by the Treasury Department, and all legal questions are settled for it by the Attorney-General or his assistants. Any reorganization, therefore, must be made within these somewhat narrow limitations of law governing the civil-service appointments and of methods of transaction of business laid down by the Treasury and other departments. Nevertheless, our methods have been given careful study by various experts employed for the purpose and have been improved from time to time as result of such advice. They have been commended by President Ripley, of the Santa Fe system, as being the most businesslike of any bureau of the Government. Nevertheless, I am eager to discuss any faults or defects and to remedy them, so that I should be more than glad to have from you any suggestions which would lead to reorganization along more practical businesslike lines.

I am asking this not in a controversial spirit but in a sincere belief that you can and will help the public service by suggestions which you doubtless have in mind. Some of these will probably be found to be inconsistent with existing law and departmental practice which has the force of law, but I do not question the fact that you can make some suggestions which will be well worth the time and trouble.

Very truly, yours,

F. H. NEWELL, *Director*.

Mr. PEPPER. Here is a letter from Mr. Newell, the director, to Senator Carter, dated October 9, 1907.

The CHAIRMAN. If there is no objection, that is admitted.
(The letter is as follows:)

FHN-IMP.]

OCTOBER 9, 1909.

HON. THOMAS H. CARTER, *Helena, Mont.*

DEAR SIR: Referring to your letter of September 16, inclosing one from Mr. L. W. Hill, president of the Great Northern Railway, I had a conversation with him in St. Paul on my way east on September 27. Up to that time I did not know about the "black tent" lectures to which he refers, and I find also that there has been no record in the Washington office on the subject, it being evidently a matter taken up directly between Secretary Ballinger and Mr. E. T. Perkins.

I have written to Mr. Ballinger and asked him to put in writing his instructions or wishes in the matter, and have called upon Mr. Perkins for a report, although, the matter as above stated, being taken up by the Secretary, I naturally feel a little hesitation about intervening. From Mr. Perkins's statement, I do not see but that he has conducted the matter fairly and corresponded with all the western railroads, as authorized by the Secretary, the principal stipulation being that he should give all of them a chance to cooperate. The money received from various roads has been deposited in a bank and all expenditures made by check, accounts being kept of every item.

After my talk with Mr. Hill I urged Perkins to have lantern slides exhibited of every project, and I understand he is now doing this. As to whether the system is desirable or not, it is impossible to judge until the results are shown. It was evidently well thought of by Mr. Ballinger.

Inclosed herewith is copy of ticket of admission; also of the little advertising slip handed to each person, also a form of letter which is being sent to each of the addressees given on the admission card. As a result of sending out these letters a great many inquiries are received concerning the reclamation service projects, particularly those named in the letter.

Very truly, yours,

F. H. NEWELL, *Director*.

Mr. PEPPER. Here is a letter from Director Newell to the Secretary of the Interior dated October 20, 1909, and a letter from the Secretary of the Interior to Director Newell on October 29, 1909, the second letter being specifically stated to be a reply to the former.

The CHAIRMAN. Is there any objection to that?

Mr. VERTREES. No, sir.
The CHAIRMAN. It is admitted.
(The letters are as follows:)

HN-GMA.]

OCTOBER 20, 1909.

He honorable the SECRETARY OF THE INTERIOR.

SIR: In connection with the Chicago office of the Reclamation Service, it has been found that continual demand is being made upon the time and energies of Mr. E. T. Perkins, engineer in charge, to assist in various public or semipublic movements looking toward the development of the west and utilization of the public lands.

The general conditions have been discussed informally between Mr. Ballinger and Mr. Perkins, and it is the understanding that as a result of this conversation Mr. Perkins has taken charge of what is known as the "black tent" lectures, financed by certain western railroads.

He has also been asked to take advisory part in the so-called United States Land and Irrigation Exposition in Chicago from November 27 to December 4, backed principally by the Chicago Tribune. Mr. Perkins has no interest whatever in the financial side of this. He is assisting as an officer of the Reclamation Service, giving them the advantage of his experience in such matters. He states that it will be necessary for him to devote probably two hours a day to the matter during the time of the exposition.

There is also another enterprise in Chicago called the National Farm Land Congress in which he is being consulted, but without any financial obligation or advantage. It is expected that this body will hold a series of public meetings or congress in Chicago November 16 to 20.

There is also a Northwestern Opportunity League which has requested Mr. Perkins for information and advice.

In view of the number and importance of these demands upon Mr. Perkins's time and the fact that his relation with them has been up to the present time a matter of oral consideration, I respectfully request from the department written approval or comments on these matters.

Very respectfully,

(Sd) F. H. NEWELL, *Director.*

THE SECRETARY OF THE INTERIOR,
Washington, October 29, 1909.

DEAR SIR: Your letter of October 20 was handed me on my return from the West, which relates to the Chicago office of the Reclamation Service. In answer to your letter, I am not prepared to say that Mr. Perkins should devote any considerable amount of his time to publicity matters, especially to the detriment of the service for which he was originally selected. My present view is that the Chicago office should be practically limited to the adjustment of transportation rates. If a publicity bureau is to be attached to it, the functions and limitations of this bureau should be outlined with great care. My conversation with Mr. Perkins related only to lectures in some room or rooms in the Federal Building which might be used in illustrating the government projects by lectures, transparencies, etc., and the general cooperation of the railways interested in the settlement of government projects by advertising matter. The "black tent" lectures spoken of are matters that are entirely new to me. I consider it proper that the service should give reasonable assistance to the Land and Irrigation Exposition, the National Farm Land Congress, and other like methods of exploitation, which I understand will be done through Mr. Blanchard.

You will therefore direct that Mr. Perkins's activities be limited according to the views above set forth.

Very respectfully,

R. A. BALLINGER, *Secretary.*

Mr. F. H. NEWELL,
Director Reclamation Service.

Mr. PEPPER. A letter from Director Newell to Mr. F. E. Huffer, dated October 18, 1909.

The CHAIRMAN. Any objection to that?

Mr. VERTREES. No, sir.

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The CHAIRMAN. It is admitted.
(The letter is as follows:)

FHN-GFS.]

Mr. F. E. HUFFER,

U. S. Reclamation Service, Glendive, Mont.

OCTOBER 18, 1909.

DEAR SIR: Before you return to the Washington office, I wish you to make a thorough inspection of the Chicago office in the same way that you have been doing with other field offices, and also give especial attention to checking up what is known as the "black-tent" fund so that you may be prepared to certify to its correctness.

This is a fund which has been collected and expended in the name of the Reclamation Service by Mr. E. T. Perkins in accordance with oral instructions and understanding from Mr. Ballinger. From the fact, however, that the name of the Reclamation Service has been used in this connection, I think it essential that the account be scrutinized not merely for the good of the service, but in order to guard against personal criticism of Mr. Perkins.

In this connection see on the Chicago office files copy of Mr. Perkins's letter of October 6 to me regarding the matter.

A separate report should be made supplementing the statements of October 6 above described and stating that you have verified the amounts received and expended by vouchers or other evidence and that the fiscal transactions appear to be as stated.

Please state also to what extent, if any, the Reclamation Service is in your opinion benefited; also note what employees of the service are engaged in the conduct of the work, what proportion of their time is given to it, their compensation from the reclamation fund or from other sources.

Very truly yours,

(Sgd.) F. H. NEWELL, *Director.*

Copy to Mr. E. T. Perkins.

Mr. PEPPER. Is that the letter you referred to, Mr. Davis, when you spoke of an order having been given to Mr. Huffer to examine the Chicago office?

Mr. DAVIS. It is.

Mr. PEPPER. Here is a letter from E. C. Perkins to the Director of the Reclamation Service, dated October 21, 1909, acknowledging receipt of a carbon copy of the letter last mentioned to Huffer.

The CHAIRMAN. If there is no objection that is admitted.

(The letter is as follows:)

[Subject: Inspection Chicago office. No ans. File. E. G. L.]

In reply please refer to P-99.]

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
777-779 Federal Building, Chicago, October 21, 1909.

The DIRECTOR, U. S. RECLAMATION SERVICE,
Washington, D. C.

SIR: Carbon of your letter to Mr. F. E. Huffer has been duly received. Will you please instruct Mr. Huffer to notify me at the earliest date possible as to when he will probably be in Chicago, in order that I may be sure of being here to personally afford him every opportunity to investigate the affairs of this office.

Very respectfully,

E. T. PERKINS, *Engineer in Charge.*

Mr. PEPPER. Here is a letter from F. E. Huffer, fiscal inspector to the Director of the Reclamation Service, dated October 27, 1909.

The CHAIRMAN. Without objection that is admitted.

(The letter is as follows:)

7EH-WWH.]

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
At Glendive, Mont., October 27, 1909.

The DIRECTOR, U. S. RECLAMATION SERVICE,
Washington, D. C.

SIR: Receipt is acknowledged of your letter, dated October 18, directing me to make a thorough inspection of the Chicago office in the same way that I have been doing with the other field offices. It is also noted that you desire me to give special attention to what is known as the "black tent fund," in order that I may be prepared to certify to its correctness.

You are advised that these matters will receive my attention, and an abstract will be prepared of the receipts and disbursements from the "black tent fund," referred to above.

Very respectfully,

F. E. HUFFER, *Fiscal Inspector.*

Mr. PEPPER. Two reports, an original and supplemental report, both dated November 15, 1909, written by F. E. Huffer, fiscal inspector, to Mr. Newell, Director of the Reclamation Service.

The CHAIRMAN. Without objection that is admitted.

(The letter is as follows:)

514-A.]

DEPARTMENT OF THE INTERIOR,
UNITED STATES GEOLOGICAL SURVEY,
RECLAMATION SERVICE,
Washington, D. C., November 15, 1909.

Mr. F. H. NEWELL,
Director United States Reclamation Service,
Washington, D. C.

SIR: Acting under instructions contained in your letter to me dated October 18, I have visited the Chicago office and have the honor to submit the following report in connection with my investigations covering the black-tent account. Attached hereto is a general statement which shows the receipts from the Union Pacific and Atchison, Topeka and Santa Fe railroads to November 8, 1909, to be six thousand and fifty dollars (\$6,050). The disbursements from this fund are shown on the same statement, the detail items being shown on supporting statements Nos. 1 and 2. This statement also shows a balance on hand deposited in the Commercial National Bank of \$457.13, which is supported by bank statement attached hereto, and a balance of \$482.57 in R. A. Maynard's possession. The expenditures from the fund are covered by vouchers, receipted invoices, or other evidence showing the purpose for which payment has been made with the exception of ten dollars (\$10) in check No. 1 and checks Nos. 40 and 76, drawn in favor of E. T. Perkins, presumably to cover traveling expenses, but the detail items are not shown on the accounts.

No bookkeeping record is being kept covering these expenditures, the returned checks, check books, stubs, and invoices constituting the only records.

This account is now in the hands of the Union Pacific Railroad Company, where it was sent to be audited. I am not familiar with railroad auditing, and therefore can not say that the records as they are now being kept will answer their requirements. From the view point of the service, however, I would advise that a bookkeeping record be kept covering these expenditures, and that, in addition to procuring receipted invoices covering purchases, itemized expense accounts should be submitted covering all traveling expense accounts. In conclusion, I wish to put myself on record by stating that the funds in the black-tent account are in general being applied to the purposes for which they were intended, but the records covering these expenditures are poorly kept and show poor application of business methods.

Very respectfully,

F. E. HUFFER, *Fiscal Inspector.*

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Receipts and expenditures, black tent account, to November 8, 1909.

Receipts:

August 16. Union Pacific Railroad.....	\$1,400.00
September 3. Union Pacific Railroad.....	500.00
September 13. Union Pacific Railroad.....	400.00
September 20. Union Pacific Railroad.....	1,000.00
September 25. Atchison, Topeka and Santa Fe.....	750.00
October 11. Union Pacific Railroad.....	1,000.00
November 1. Union Pacific Railroad.....	1,000.00

Total receipts..... 6,050.00

Expenditures (statement No. 1)..... 5,592.87
Amount on hand at Commercial National Bank..... 457.13

6,050.00

Total advances to R. A. Maynard (statement No. 1)..... 2,450.00

Expenditures (statement No. 2)..... 1,967.43
Amount in Maynard's possession..... 482.57

2,450.00

In addition to the above \$200 was paid to the Iowa department of agriculture by the Union Pacific Railroad for rentals of lot at Iowa State Fair Grounds. This amount not carried through black tent accounts.

STATEMENT NO. 1.—Itemized statement of expenditures, black tent fund.

Date.	Check No.	Payee.	Description.	Amount.
1909.				
Aug. 18	1	E. T. Perkins.....	Miscellaneous purchases.....	\$20.00
	2	The Laemmle Film Service..	Stereopticon machine.....	223.50
19	3	The Show World.....	Advertising.....	10.00
	4	The Frank Queen Publish- ing Co.....	do.....	5.00
	6	McIntosh Stereopticon Co..	Supplies.....	16.20
20	7	J. D. Reeves.....	Services and expense.....	45.20
21	8	W. W. Paton.....	Services.....	17.20
23	9	Geo. B. Carpenter & Co.....	Camp cots, etc.....	15.29
	10		Railroad fare, Chicago to Des Moines, for Maynard, Paton, and Mackey.....	27.00
	11	R. A. Maynard.....	Travel expense.....	60.05
	12	do.....	Services, August 15 to 21.....	50.00
25	17	Marshall Field & Co.....	Pillows, comforters, etc.....	30.30
27	18	Eugene Frank.....	Travel expense.....	38.37
	19	Safford Stamp Works.....	Supplies.....	10.80
28	20	L. M. Prince.....	do.....	3.50
	21	L. A. McGrath.....	Services.....	7.50
Sept. 3	24	John V. Farwell Co.....	Chairs, etc.....	172.09
	25	C. A. Taylor Trunk Works..	Trunks.....	50.00
4	26	Rand McNally Co.....	Cards, etc.....	19.20
	29	C. E. McGray.....	Maps, canvas, etc.....	95.00
7	30	Des Moines Tent and Awning Co.....	Tents, etc.....	166.90
9	31	W. W. Paton.....	Travel expense.....	14.67
13	32	Miss Olive Wallace.....	Services.....	5.00
	33	Miss Emma Clark.....	do.....	4.00
	35	R. A. Maynard.....	Travel expense.....	90.43
	36	W. W. Paton.....	do.....	13.30
	37	Eugene Frank.....	do.....	17.74
	38	Verne W. Mackey.....	do.....	21.39
	39	J. D. Reeves.....	do.....	29.20
14	40	E. T. Perkins.....	Expenses.....	43.71
15	41	Chicago Letter and Supply Co.....	Supplies.....	2.00
	42	Underwood Typewriter Co..	Rent of typewriters.....	4.70
	43	American Seal and Stamp Works.....	Supplies.....	1.30
	44	S. W. Dick.....	Transfer charges.....	1.50
16	45	W. E. Claffin.....	Services.....	15.00

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1825

STATEMENT No. 1.—Itemized statement of expenditures, black tent fund—Continued.

Date.	Check No.	Payee.	Description.	Amount.
1900.				
Sept. 17	46	Louis W. Franz.	Sign.	\$0.85
20	50	Underwood Typewriter Co.	Rent of typewriters.	3.50
	51	Rand-McNally Co.	Book covers.	2.00
25	52	Miss Olive Wallace.	Services.	30.00
	53	Miss Emma Clark.	do.	30.00
	54	Miss Ada Valentine.	do.	26.00
27	55	M. T. Maynard.	Travel expenses.	20.20
	56	R. A. Maynard.	do.	48.70
	58	V. W. Mackey.	do.	46.45
	59	Eugene Frank.	do.	42.56
	60	J. D. Reeves.	do.	26.54
28	62	People's Gaslight and Coke Co.	Supplies.	1.41
	63	American Multigraph Sales Co.	do.	6.00
	64	Attila Norman.	Rent of Auditorium, Des Moines, Iowa.	100.00
Oct. 1	68	W. W. Paton.	Travel expense.	34.56
2	69	Miss Mabel McDonald.	Services.	22.50
5	70	Blue Line Transfer.	Drayage.	32.18
6	72	Eugene Frank.	Travel expense.	18.75
	73	V. W. Mackey.	do.	18.34
	75	J. D. Reeves.	do.	31.48
	77	R. A. Maynard.	do.	24.90
	78	M. T. Maynard.	do.	22.35
8	79	Rand-McNally Co.	Supplies.	235.08
9	80	Miss Olive Wallace.	Services.	30.00
	81	Miss Emma Clark.	do.	30.00
	82	Miss Ada Valentine.	do.	30.00
	83	R. S. Walte.	do.	25.00
12	86	G. W. Westerdahl.	Expenses.	17.65
15	87	Rand-McNally Co.	Supplies.	10.65
19	90	M. T. Maynard.	Travel expense.	42.25
	91	R. A. Maynard.	do.	49.67
	92	V. W. Mackey.	do.	32.09
	93	Eugene Frank.	do.	29.40
6	76	E. T. Perkins.	do.	20.00
19	94	J. D. Reeves.	do.	30.84
22	95	Rand-McNally.	Supplies.	29.92
23	96	Olive Wallace.	Services.	30.00
	97	Emma Clark.	do.	30.00
	98	Ada Valentine.	do.	30.00
	99	R. S. Walte.	do.	35.00
	100	M. T. Maynard.	Travel expense.	29.60
26	101	Rand-McNally Co.	Supplies.	4.60
27	102	do.	do.	42.50
Nov. 1	106	do.	do.	3.70
	107	The Laemmle Film Service.	do.	7.15
4	108	The C. R. I. & P.	Express.	1.80
	112	Rand-McNally Co.	Supplies.	46.65
6	113	R. A. Maynard.	Travel expense.	55.19
	114	J. D. Reeves.	do.	31.48
	115	Eugene Frank.	do.	36.52
	116	V. W. Mackey.	do.	42.42
	117	M. T. Maynard.	do.	38.07
	118	Olive Wallace.	Services.	30.00
	119	Ada Valentine.	do.	30.00
	120	Emma Clark.	do.	30.00
	121	R. S. Walte.	do.	35.00
8	122	The Laemmle Film Service	Supplies.	13.36
		Amount expended through Chicago office.		3,142.87

Amounts advanced R. A. Maynard.

August 24.	Checks Nos. 13, 14, 15, 16, four checks, \$25 each.	\$100.00
September 3.	Check No. 23.	250.00
September 6.	Checks Nos. 27, 28, two checks, \$100 each.	200.00
September 13.	Checks Nos. 33, 34, 35, three checks, \$100 each.	300.00
September 20.	Checks Nos. 47, 48, 49, three checks, \$100 each.	300.00
September 30.	Checks Nos. 65, 66, 67, three checks, \$100 each.	300.00
October 9.	Checks Nos. 84, 85, two checks, \$100 each.	200.00
October 17.	Checks Nos. 88, 89, two checks, \$100 each.	200.00
October 29.	Checks Nos. 103, 104, 105, three checks, \$100 each.	300.00
November 4.	Checks Nos. 109, 110, 111, three checks, \$100 each.	300.00
	Total amount advanced.	2,450.00

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STATEMENT 2.—Statement of expenditures, R. A. Maynard expense fund.

Statement week ending—

September 4, 1909.....	\$115.10
September 11, 1909.....	336.75
September 18, 1909.....	322.00
September 25, 1909.....	149.24
October 2, 1909.....	241.00
October 9, 1909.....	22.98
October 16, 1909.....	330.41
October 23, 1909.....	53.00
October 30, 1909.....	415.00
	<hr/> 1,967.48

All expenditures covered by the above statements in excess of \$5 are supported by subvouchers or receipted invoices.

Bank statement to November 8—Black-tent fund—Funds deposited in Commercial National Bank.

DEPOSITS.

1909.		
Aug. 16.....	\$1,400.00	Checks paid at bank..... \$5,354.77
Sept. 3.....	500.00	Checks outstanding, 111, 113,
Sept. 13.....	400.00	114, 117, 122..... 238.50
Sept. 20.....	1,000.00	Balance available..... 457.12
Sept. 25.....	750.00	
Oct. 11.....	1,000.00	
Nov. 1.....	1,000.00	
	<hr/> 6,050.00	<hr/> 6,050.00

WASHINGTON, D. C., November 15, 1909

Mr. F. H. NEWELL,

Director United States Reclamation Service, Washington, D. C.

SIR: Complying with your request that I visit the Chicago office and give particular attention to the black tent publicity account, I have the honor to report that I have given this matter most careful attention, and submit the following as the result of my investigations:

Upon my arrival at Chicago I informed Mr. Perkins that I had received instructions from you to audit and check these accounts. He expressed himself as being glad that I was going to do this work, but that all of the accounts had been sent to the Union Pacific Railroad to be audited. I then asked him if it would be possible to have them returned for a few days, in order that I could comply with your instructions. Mr. Perkins said he would do what he could in connection with this matter, and we went together to the Union Pacific office, where I was introduced to a Mr. Mattes, and made known my desire to secure the records covering the account in question. Mr. Mattes told me that he had not found time to check the records, and, therefore, could not say how they were being kept, but that he would be glad to turn them over to me, and would give me any additional information in his possession covering this matter.

I then went through these records, which consisted of invoices, returned checks, check stubs, etc., and found nothing of importance to criticize other than a lack of business methods and management.

The result of this investigation is covered by a separate report, inclosed herewith. After checking these records I then went to Mr. Perkins and asked him if the records I had finished checking covered all the money he had received from the various railroads, and he replied that it was. The total receipts, as shown on his records, amounted to \$6,050. In order to verify the correctness of these figures, I returned to the railroad offices and found that the Union Pacific Company alone had contributed \$7,587 to this fund, and the Atchison, Topeka and Santa Fe \$750, making a total of \$8,337. This discrepancy did not look good to me and aroused my suspicions. I went after Mr. Mattes, of the Union Pacific, and asked for a detailed statement of these expenditures. We went over his records together and found that \$287 had been paid out direct by this company, and that in addition to the amounts paid to Mr. Perkins for the black tent fund he had instructions to pay Perkins \$500 on the 1st of each

month for publicity expenses. I asked Mattes if he knew for what purpose the money was to be used, and he replied that he did not, as his instructions came from the Omaha office, and he was not advised as to the purpose of these expenditures.

I then went back to the office and told Mr. Perkins that I had checked the black tent records, but that they did not cover all the receipts, and that I would like to know where the records were covering the balance of the money he had received. He then told me that he had received a copy of my instructions, and that I was authorized to check only the black tent records. I replied that it was true, but I was satisfied you had no knowledge of any other account or it would have been mentioned in your letter.

Perkins said you were entirely familiar with all the arrangements, and that you did not want me to go further than to check the black-tent accounts. I then told Mr. Perkins that my intention was to check thoroughly everything connected with his matter, and that if he did not consider that I was vested with sufficient authority I would wire your office, but in any event I would stay right there until he came through with the necessary information.

He then told me that he received \$200 per month for expenses in and around the Chicago office, and that this money was carried in what he called a maintenance account. I asked for his records covering this maintenance account. He told me that this money was carried in his personal account in the Commercial National Bank, and that he kept a personal record covering these expenditures. I insisted upon seeing this record, and he handed me a little book showing receipts and expenditures, copy of which is attached hereto. The expenditures for purchases as shown by this record are in the main supported by receipted invoices, but the amounts paid for miscellaneous expenses, traveling expenses, entertainments, etc., are shown only in the personal record referred to above. It will be noted that this record shows payment to Mrs. K. L. Walker, Mr. Perkins's stenographer, of two checks for \$5 and \$10, respectively. When I was looking over the record Mr. Perkins said "You will note I have given Mrs. Walker credit for a few dollars for extra work done Sundays and evenings. She has not received the money, but it is waiting for her when she wants it." Mrs. Walker said it was nice for Mr. Perkins to give her credit for this money, but she had taken none at that time. I said nothing, but at the moment Mr. Perkins made this statement I had in my hand the \$5 check in Mrs. Walker's favor, which had been paid and returned by the bank.

This incident is mentioned merely to show you Mr. Perkins's attitude and the character of the statements made by him, many of which were misleading, making it hard for me to obtain true information. After going through this maintenance account, which involves \$800, I was still short \$1,200 on the total receipts. I then went to Mr. Perkins again and informed him that I had checked the maintenance account, but I was still short \$1,200, or \$300 per month, covering a period of four months. I asked what became of this \$1,200, and after much spluttering he finally admitted that it went to him for his services. I asked him if you knew about this arrangement, and he replied that you did and referred to a letter from you dated February 28, 1908, in reply to a letter from him, giving him authority to do outside work. Copies of these letters are attached hereto. I was not satisfied, however, as your letter to Mr. Cooper, of the Northern Pacific Railway Company—a copy of which is attached hereto—shows you did not know Mr. Perkins was receiving a salary of \$300 per month from the Harriman railroads. I did not follow this subject out any further with Mr. Perkins, however, as I did not know what arrangements you had made, and our relations, after we had finished, were perfectly friendly and amicable.

From the foregoing it is found that the money received from the railroads is divided into two or three funds. Attached hereto is statement No. 1, which shows the total amount received from the railroads to November 8, 1909, and the various funds receiving benefit. It will be noted that \$287 was paid direct by the railroad company, and did not pass through Mr. Perkins's hands. The amount charged to black tent—\$6,050—is covered by a separate report attached hereto. The amount charged to publicity is accounted for on statement No. 2, attached hereto.

To sum up all the foregoing, it is found that the railroads have contributed to November 8, 1909, \$8,337, to be used for advertising purposes, and of this amount the railroads expended direct \$287, \$6,050 was charged to the black-tent account, \$2,000 was charged to publicity account on the railroad company's books and was deposited in the Commercial National Bank to the credit of Mr. Perkins's private account. Of this amount Mr. Perkins is supposed to use \$800 for miscellaneous purchases, traveling expenses, etc., and account for the expenditures to the railroad company. The balance of \$300 per month, or a total of \$1,200 received to date goes to Mr. Perkins for his personal services. At the present time the Reclamation Service is paying Mr. Perkins \$275 per month for services, he is also receiving \$300 per month for services from the Harri-

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man railroads, and in addition he is entertaining his friends, etc., and paying for minor purchases to the extent of \$200 per month, which is also furnished by the Harriman railroads, and as if this was not enough, he presents an expense account from time to time to be paid from the black tent fund. All his time is given to publicity work and other matters in which the railroads are interested.

In concluding this report I wish to state that I would like to talk this entire matter over with you personally, as there are many details in connection with the expenditure of this money that I can not cover in this report. In this report I have made no conclusions or deductions, my intention being to bring out nothing but absolute facts, and I have substantial documentary evidence to support all matters touched on above.

Very respectfully,

F. E. HUFFER, *Fiscal Inspector.*

Mr. PEPPER. Accompanying these letters is a sort of an exhibit, a summary statement. I am not clear from glancing at them whether it is an exhibit to the first or the second of these reports, which could be printed in connection with either of them.

The CHAIRMAN. Without objection it is admitted.

(The statement is as follows:)

GENERAL STATEMENT.

Railroad funds advanced to November 8, 1909.

	Receipts.	Amount.	Disposition.			Remarks.
			Black tent.	Publicity.	Disbursed by railroad.	
1909.	Received from—					
Aug. 2	Union Pacific.....	\$52.00			\$52.00	Paid McKay.
2	Do.....	500.00		\$500.00		
16	Do.....	1,400.00	\$1,400.00			
27	Do.....	200.00			200.00	Iowa fair.
Sept. 3	Do.....	500.00		500.00		
3	Do.....	500.00	500.00			
13	Do.....	400.00	400.00			
23	Do.....	1,000.00	1,000.00			
23	Do.....	35.00			35.00	In Omaha.
25	Atchison, Topeka and Santa Fe.....	750.00	750.00			
Oct. 13	Union Pacific.....	500.00		500.00		
13	Do.....	1,000.00	1,000.00			
Nov. 2	Do.....	500.00		500.00		
2	Do.....	1,000.00	1,000.00			
		8,337.00	6,050.00	2,000.00	287.00	

Publicity funds received from railroads.

	Paid by—	Amount.	Maintenance.	Perkins.	Remarks.
1909.					
Aug. 2	Union Pacific	\$500.00	\$200.00	\$300.00	Union Pacific check No. 2899.
Sept. 3	.....do.....	200.00	200.00		Union Pacific check No. 2901.
3	.....do.....	300.00		300.00	Union Pacific check No. 2902.
Oct. 13	.....do.....	500.00	200.00	300.00	Union Pacific check No. 3103.
Nov. 2do.....	500.00	200.00	300.00	Union Pacific check No. 3147.
		2,000.00	800.00	1,200.00	

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Office maintenance.

[Copy of E. T. Perkins's record.]

RECEIPTS.

August 2, Union Pacific.....	\$200. 00
Expended, August.....	111. 70
	<hr/>
	88. 30
September 4, Union Pacific.....	200. 00
	<hr/>
	288. 30
Expended, September 30.....	133. 98
	<hr/>
	154. 32
October 15, Union Pacific.....	200. 00
	<hr/>
	354. 32
Expended, October 1 to 30.....	191. 47
	<hr/>
Balance, November 1, 1909.....	162. 85

NOTE.—It is noted that November 2 receipt of \$200 is not shown on this record.

EXPENDITURES.

Aug. 5. Stamps.....	\$1. 00
7. 3 lantern slides, colored, \$1.....	3. 00
9. Miscell. expend 1-9 E. T. P.....	4. 85
13. Entertainment R. W. Pullman, Editor Forest Service.....	5. 00
16. Services Samuel H. Katz, messenger, Aug. 1-12.....	12. 00
17. Entertainment T. R. Slupp, Nat. Con. Com.....	3. 15
17. Services V. W. Mackey, Aug. 1-15.....	30. 00
18. Services K. S. Walker, Aug. 17 and 18.....	5. 00
23. Miscells. Aug. 10-23, incl., E. T. P.....	7. 40
24. Postage.....	. 80
26. E. T. Perkins, trip to Petersburg acct. lecture.....	38. 37
31. Miscellaneous expenses 24-31, E. T. P.....	1. 13
	<hr/>
	111. 70
Sept. 4. Rent of rooms 17-18, Temple Court Bldg.....	90. 00
8. Moving Waite to Temple Court.....	3. 00
9. Lettering doors.....	3. 00
9. Lantern slides, colored.....	10. 00
10. Office supplies, The Fair.....	1. 13
14. Miscell. Sept. 1 to 14, E. T. P.....	4. 00
16. Entertainment A. P. Davis.....	2. 95
18. Entertainment Blanchard.....	3. 15
21. Postage.....	3. 00
28. Entertainment F. H. Newell.....	1. 90
28. Miscell. Sept. 15-28, E. T. P.....	3. 25
30. Hinckley and Schmitt, water.....	7. 50
	<hr/>
	^a 133. 88
Oct. 2. Mounting map, Rand, McNally & Co.....	2. 00
4. Rent of rooms 17-18, Temple Court.....	90. 00
Blakesley Ptg. Co., visitors' register.....	10. 00
6. American Service Supply.....	. 75
Remington Typewriter Co., rent.....	1. 50
9. Blakesley Ptg. Co., cards.....	3. 75
9. Miscellaneous, J. C. Waite.....	9. 40
12. Miscellaneous, Sept. 28-Oct. 12, E. T. P.....	6. 82
13. Stamps and newspaper supplies.....	3. 20
16. M. M. Rothschilds, typewriter ribbons.....	6. 22
16. Osgood & Co., zinc signature.....	2. 60
16. American Multigraph Sales Co., extra parts.....	10. 00

^a Error of \$1 in his addition.

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Oct. 19.	Blakesley & Co., cards and sheets.....	\$10.75
22.	Services, K. L. Walker.....	10.00
27.	Expressage on lantern slides.....	.75
28.	Luncheon, J. R. Haynes.....	5.00
28.	Y. M. C. A. year book.....	1.25
29.	Lunch, F. H. Newell.....	1.00
29.	Strap for lantern slide box.....	.25
30.	Miscell., Oct. 12-30, E. T. P.....	5.75
30.	People's Gas Light and Coke Co.....	9.40
		191.40
Nov. 2.	Miscell., J. C. W.....	5.00
4.	Lunch, E. O. Brainiff, Forest Service.....	1.00
Oct. 23.	Monarch Typewriter Co.....	3.00
23.	Underwood Typewriter Co.....	2.00
Nov. 5.	C. E. Heiser, rent 17-18, 225 Dearborn.....	90.00
5.	Monarch typewriter.....	.50
5.	American Multigraph Sales Co.....	30.00
5.	Dorothy Taylor, slides, 27, at 85c.....	22.75
5.	E. T. P., personal slides, 27, at 40c.....	10.00
8.	Miscell., E. T. P.....	4.65
8.	Lunch, Huffer and Westerdahl.....	2.00

Mr. PEPPER. Letter of A. P. Davis, acting director, to Mr. E. T. Perkins, November 17, 1909. Is that the letter referred to by you in your testimony as your letter requesting some statement or explanation from Perkins?

Mr. DAVIS. I wrote him this letter. I do not think I referred to it in my testimony.

Mr. PEPPER. I beg your pardon. You did write him that letter?

Mr. DAVIS. This is the letter I wrote him; yes, sir.

The CHAIRMAN. It is admitted.

(The letter referred to is as follows:)

[F. E. H.—E. G. L.]

WASHINGTON, D. C., November 17, 1909.

Mr. E. T. PERKINS,
U. S. Reclamation Service, Chicago, Ill.

SIR: I am in receipt of reports from Mr. F. E. Huffer, fiscal inspector, concerning his work in your office in connection with checking and auditing your records covering moneys received by you from the Union Pacific and Atchison, Topeka and Santa Fe railroads. It is noted that a portion of these funds are used by you for miscellaneous purchases in your office and for your personal expenses. It is also noted that you are now, and have been for the past four months, receiving \$300 per month from the Union Pacific Railroad for your own services. This action on your part is not understood, and it is requested that you inform this office upon what authority you receive a salary for representing private interests, and that you submit at once a full report explaining your actions in this matter.

Very respectfully,

A. P. DAVIS, Acting Director.

Mr. PEPPER. Letter of F. E. Huffer, fiscal inspector to the Director of the Reclamation Service, dated November 18, 1909.

The CHAIRMAN. Admitted.

(The letter referred to is as follows:)

Confidential.]

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE.
Washington, D. C., November 18, 1909.

The DIRECTOR U. S. RECLAMATION SERVICE.

SIR: After spending about ten days in the Chicago office looking into business methods being used and general conditions, I have the honor to submit the following report: At the present time this office is divided into three sections, namely, publicity or settlement, purchasing, and transportation.

Mr. Perkins is nominally at the head of the entire office, but at present all his time is taken up with the railroad cooperation publicity work, and in preparing and dis-

lectures, etc. Attached hereto is a statement showing the organization in this, together with salaries, and the amount properly chargeable to the different sections. In reporting on this office I will first briefly explain the work now being done in each section.

Publicity.—At the present time the publicity and settlement work is being done on a cooperative plan between this service and the Harriman lines and the Atchafalaya and Santa Fe railroads. Funds are advanced by these roads and disbursed by Mr. Perkins to cover expenses incurred by R. A. Maynard in prosecuting the black publicity campaign, for printing descriptive circulars for the various projects, and for the services of additional stenographers preparing and making form letters, circulars, etc. I am not in a position to state what benefits are derived from this work, but Waite's report will give the number of form letters sent out, inquiries answered, and Mr. Perkins's report will give the number of pamphlets prepared describing different projects.

Transportation.—The transportation section is being conducted under the personal supervision of Mr. Dick. The work consists of auditing and examining railroad and express bills, and the incidental correspondence in connection therewith, tracing and forwarding shipments, preparing schedules, showing government rates for the different projects, obtaining rebates on account of mileage-book coupons, preparing rebate checks against the railroads on account of contractors' shipments, obtaining concessions, etc., from the various railroads, and many other detail matters in connection with the transportation business.

Most of the work in this section is practically up to date.

Purchasing.—Mr. F. W. Kirksey is in direct charge of this section. The work consists of making purchases on request from the various engineers located in the field, and inspecting materials before they are shipped, arranging transportation for purchases made through this section and following them through to destination. Circulars are also prepared covering these purchases, which are sent, together with the bills, showing the method of making the purchase, to the project offices for payment. In addition to purchases of routine and ordinary nature, all contracts for cement are handled through this section. The work of this section is up to date and appears to be handled in a thorough and efficient manner.

Organization and business methods.—This office is poorly organized, and as a result its administration is both unsatisfactory and expensive. There is no direct definition of authority vested in the chiefs of sections, and as much of the work is of a general nature, some difficulty is experienced in properly fixing responsibility. All of Mr. Maynard's time is devoted to publicity work, editing manuscript for the project circulars, preparing and delivering lectures, carrying on a voluminous correspondence with various railroad officials and representatives of newspapers, besides arranging for the publication and entertainment of various railroad and government officials. This service receives no direct benefit for his services other than that derived from his publicity work, and, in my opinion, he is a dangerous man to be representing the service in that city, as many of his statements (some of which were made in my presence) to railroad officials are utterly false and misleading.

I wish to place myself on record as being strongly opposed to the methods now being used in prosecuting the present publicity campaign in conjunction with the various projects. This service is undoubtedly receiving benefit; but we should not handle funds or be held responsible for the expenditures, as the railroads can truthfully say that they have paid us money to advance their interests, and should any difficulty arise in connection with this matter we would be subject to criticism. I am not opposed to cooperative publicity when properly conducted; but I do think it is not a good policy, but also dangerous, for our employees to handle and disburse funds dictated by private interests.

As to Mr. Perkins's zeal and enthusiasm in prosecuting this work the entire organization has become more or less demoralized, and the machinery for handling regular work of the office is subservient to this publicity campaign. Mr. Perkins's plan is to eventually build up a large advertising agency in Chicago, to exploit not the Reclamation Service, but the entire Interior Department. I am not familiar with the Secretary's desire in connection with this matter, but as far as this service is concerned I believe a settlement agent and two or three assistants, reporting direct to the office, would be much more satisfactory and economical. The organization in connection with the purchasing and transportation sections is most unsatisfactory, and as a result they are both expensive and much trouble. Confusion and sometimes delay are experienced in handling ordinary routine business matters. The work of the two sections overlaps more or less, and the men are working at cross purposes. Mr. Dick, in charge of the transportation section, is most conscientious and is trying to do good work, but he has been hammered and badgered about by Mr. Perkins until he has lost his nerve. He storms and blusters about the office, but does not accomplish

anything. He seems to have lost the faculty of probing a subject to the bottom making himself familiar with all conditions; thus, much of his correspondence is complete, and many matters are covered by a large pile of letters and drawn out a period of several months when one clear, concise letter written with a full knowledge of all the facts would settle the entire subject. The purchasing section, under personal direction of Mr. Kirksey, is doing good work; but he is still in very poor health and I am very apprehensive regarding the outcome of his trouble. He has no study capable of handling his work, and if he should become seriously ill, there is no one in Chicago to take up and handle the work of this section.

The organization of this office has never been satisfactory, and more trouble has been experienced in handling its business matters than in any of the other offices. This unsatisfactory condition has been brought to your attention several times during the past year, and several attempts have been made to remedy the matters, which have been in a measure successful, but other irregularities have developed, and it will be necessary to reorganize the entire office before satisfactory results may be expected. In view of the foregoing, it is then recommended that action be taken as soon as practicable and the entire office reorganized in the following manner: The publicity work should be absolutely divorced from the purchasing and transportation sections and handled in a separate office under the supervision of your office. Mr. Waite seems to understand this work, and I have no doubt that he could handle it without difficulty. I know of no place in this office but Mr. Perkins, as he is no business man or administrative officer. A good loyal, administrative man should be placed in charge of this office—one who understands field conditions and requirements.

He should also possess good judgment and tact as this office is a strategic point in the service where business is being conducted direct with corporations and our policy is judged by the character of our representatives.

With a good, live business man at the head of this office the work can be rearranged and the purchasing and transportation sections thrown together, thus eliminating much of the difficulty being experienced at the present time in connection with definition of duties and authority, etc. I would suggest that Mr. Dick should be allowed to continue handling transportation matters until such time as the man in charge of the office has become familiar with the work, and then his services could be dispensed with. There is nothing difficult or complicated in connection with railroad work or in securing contracts and concessions, and I am of the opinion that if proper measures are adopted to install a system founded on firm business principles we will gain and hold the respect of the various railroads, thus establishing a basis for demanding concessions which will be of far more value than the present arrangement.

By referring again to the attached sheet showing the organization of this office it will be noted that we are now paying about \$30,000 per annum for salaries in this office. This is entirely out of proportion to the amount of work being done, and I believe this office is reorganized along the lines outlined above about one third of the cost will be saved to the service.

Very respectfully,

F. E. HUFFER, Fiscal Inspector

Chicago office organization.

Name.	Salary.	Publicity.	Purchasing.
E. T. Perkins.....	\$3,300	\$3,300	
S. W. Dick.....	2,280		
F. W. Kirksey.....	1,980		\$1,980
C. E. Harris.....	1,800		
J. C. Walte.....	1,680	1,680	
C. E. Pleasance.....	1,200	600	600
K. L. Walker.....	1,200	1,200	
J. A. Brown.....	1,200		
Felix Troutman.....	1,200		
J. A. Moss.....	1,200		
W. E. Claflin.....	1,200	1,200	
H. P. Lehman.....	1,200		1,200
J. Y. Yates.....	1,080		1,080
Clara C. Hellman.....	1,020		1,020
Clara Le Quam.....	1,020		1,020
Anna P. Malone.....	1,020		1,020
D. Etta Stemple.....	1,020	510	
R. E. White.....	1,020		1,020
J. Clouston.....	900		
D. S. Sprague.....	900	900	
Mazie L. Pascoe.....	840		840
Mary F. Theaker.....	840		
James Ryan.....	600	300	120
	29,760	9,680	9,680

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1833

Mr. PEPPER. Letter or copy of letter dated, according to the pencil caption, "About 11/18/09," from A. P. Davis, chief engineer, to Director Newell. Is that the letter referred to in your testimony?

Mr. DAVIS. It is.

The CHAIRMAN. That is admitted.

(The letter referred to is as follows:)

[A. P. D.—E. G. L.]

ABOUT 11/18/09.

Mr. F. H. NEWELL,
*Director United States Reclamation Service,
Chicago, Ill.*

SIR: I inclose herewith report of Mr. F. E. Huffer, concerning the work of the Chicago office.

In view of the facts therein set forth, and of my previously expressed opinions on this subject, I respectfully recommend that the publicity work being handled by Mr. Perkins be discontinued, and that Mr. Perkins be requested to immediately submit his resignation.

I also recommend that the transportation and purchasing work be temporarily placed in the hands of Mr. F. E. Huffer.

Very respectfully,

A. P. DAVIS, *Chief Engineer.*

Mr. PEPPER. What reference did you make to it in your testimony?

Mr. DAVIS. This is the letter to which I referred in which I recommended that Mr. Perkins be requested to immediately submit his resignation.

Mr. PEPPER. Is that the action respecting which you afterwards spoke to Secretary Ballinger?

Mr. DAVIS. It is.

Mr. PEPPER. Copy of telegram dated November 24, 1909, from Mr. Newell to Perkins.

The CHAIRMAN. That is admitted.

(The telegram referred to is as follows:)

[Postal. FHN-GFS. F.H. Newell, Director. Night.]

WASHINGTON, D. C., November 24, 1909.

RECLAMATION, Chicago, Ill.:

Secretary Ballinger plans arriving Chicago early next week. Forward full report called for by Davis letter November 17, to reach here, if possible, before Secretary leaves.

NEWELL.

(Confirmed to Mr. Perkins.)

Mr. PEPPER. Letter from F. H. Newell to Secretary of Interior, dated November 24, 1909.

The CHAIRMAN. That is admitted.

(The letter referred to is as follows:)

[FHN-GFS.]

NOVEMBER 24, 1909.

The honorable the SECRETARY OF THE INTERIOR.

SIR: Upon my return to Washington I find your letter of October 29 regarding the Chicago office of the Reclamation Service, copy of which had been forwarded to me in the field, but not received in time for earlier consideration.

On November 22 I was in Chicago, leaving there on the morning of November 23. At that time I took up with Mr. E. T. Perkins in considerable detail the conditions recited in the earlier correspondence and acceded to his request to leave the matter to you for your personal consideration. I did this because of the fact that many of the conditions are those which apparently have arisen from the result of your conversations with Mr. Perkins and Mr. E. O. McCormick and of subsequent correspondence from your office of which I have had no information.

Reciting the matter briefly, it may be said that in connection with the transportation office in the federal building in Chicago there has gradually developed a need giving attention to questions concerning the opportunities for home making on the lands reclaimed by the Reclamation Service. From the date of the establishment of the office the time of persons in charge has been necessarily diverted by inquiries made in person by individuals seeking facts which should properly be given out to our employees. The number of these inquiries increased until it was found necessary to detail first one man and then another to give his entire time to visitors asking about the conditions in the arid West.

There has also been a steady demand for written and printed information. Beginning with letter circulars, there has been an increasing distribution of written and printed statements, pamphlets, etc. At the same time there has been a request that come in the Chicago office, notably Mr. E. T. Perkins, give public lectures before industrial organizations, university students, etc.

The matter of lectures was discussed by Mr. Perkins, and in order to have a definite record he wrote to me on February 14, 1908, asking authority to give lectures, and on February 24, 1908, I authorized the preparation of these. Copies of the correspondence are herewith attached.

In the spring of 1909, at the time I was engaged in field work, it appears that Mr. E. O. McCormick, assistant passenger director of the Southern Pacific system, called on me in Washington. On May 6, while you were in the Chicago office, Mr. Perkins discussed with you the substance of the conversation with Mr. McCormick. You then stated your position with regard to cooperation with railroads. A memorandum of the matter was made at the time by Mr. J. C. Waite, in charge of the publicity work, and prepared a written memorandum immediately as a guidance for the policy to be followed. It seems to be understood that in taking the matter up directly with Mr. Perkins that it was your desire to handle this matter personally and not through the Reclamation Service. I was unaware of the transaction, and the Washington office was not informed of the agreements made or understanding reached.

On the conclusion of the Senate committee's trip, in September, I returned East en route at St. Paul on September 27, learned for the first time of the so-called "Blasphemy Tent" lectures, and complaints made by Mr. Louis W. Hill, president of the Great Northern. I took the matter up the next day, September 28, at Chicago, with Mr. Perkins and called upon him, by letter of same date, for detail information, which was given in his letter to me of October 6, copy of which is inclosed.

Later questions arose in connection with the so-called "United States Land and Irrigation Exposition," and on October 20 I addressed a letter to you, in order to bring out definitely your desires, as I was under the impression that you were giving personal attention to these matters. I also instructed our inspector, Mr. F. E. Huffer, to verify the accounts. He brought to the attention of this office, for the first time, the details regarding the financial transactions. I met Mr. Huffer in Chicago and discussed the entire situation with Messrs. Perkins and Waite, with the result that I agreed with Mr. Perkins that he should see you at the earliest possible date and ascertain definitely your views in relation to this work, as I have a natural hesitancy about taking up a matter in which you have dealt directly with Mr. Perkins and others. I have wired Mr. Perkins that you will be in Chicago at an early date and to prepare a full report to be submitted in writing to you, covering the points of discussion.

In my letter to you of October 20 I emphasized the fact, based upon his statement to me, that Mr. Perkins derived no financial advantage from his connection with the various projects mentioned. I am now advised that he has received \$500 per month for the period of four months, \$300 of which Mr. Perkins states is for lectures at the rate of \$50 per lecture for six lectures a month, and \$200 per month for traveling and incidental expenses. Mr. Perkins quotes as his authority letters of February 14 and February 24, 1908, previously referred to. I have written him, however, stating the intention of my letter of February 24, 1908, and emphasizing the fact that there was nothing in my letter authorizing the acceptance of funds contributed by railroads or other corporations with whom we have business dealings directly or indirectly.

As before stated, I wish to leave this matter for your personal consideration with Mr. Perkins. I hope to discuss it fully with you after the conference in Chicago.

Very respectfully,

F. H. NEWELL, Director.

Mr. PEPPER. Is that a letter which was referred to in your testimony; if so, in what part of your testimony?

Mr. DAVIS. This is the letter from Mr. Newell to the Secretary of the Interior in which he corrects a previous letter in which he had

ated that Mr. Perkins was receiving no financial advantage for his connection with the various projects mentioned, in which he states he was receiving \$500 per month.

Mr. PEPPER. Letter of November 29, 1909, Mr. Newell, director, Mr. Perkins, marked "personal." You said in your testimony there was one letter in which Mr. Newell rather politely—or you used some such phrase—requested or suggested Mr. Perkins's resignation. I ask whether this letter of November 29 is the one you then had reference to?

Mr. DAVIS. It is.

The CHAIRMAN. That is admitted.

(The letter referred to is as follows:)

[FHN-IMP.]

NOVEMBER 29, 1909.

[Personal]

Mr. E. T. PERKINS,

777 Federal Building, Chicago, Ill.

DEAR SIR: With reference to lectures in Chicago and vicinity, I learn from recent report of Mr. F. E. Huffer, fiscal inspector, and from conversation with you, that arrangements were made by you during the summer by which you were to deliver a series of six lectures per month at \$50 each, or \$300 per month, and that, in addition to these, there has been a fund placed at your disposal to cover expenses, amounting \$200 per month, all being paid to you by order of Mr. E. O. McCormick.

This fact was not embodied in the report which I requested from you by my letter September 28, and I have had no memorandum concerning the matter previous to the report of Mr. Huffer, made to me on November 22. In the meantime, relying on your oral and written statements to me, I had informed the Secretary of the Interior and others that you were not deriving any financial advantage personally from your connection with such matters. In this I find that I have been mistaken, and I must modify what I have written.

In this matter of lectures, you quote as authority the correspondence of February 10 and 24, 1908. It is therefore necessary for me to call your attention to the fact that the authorization did not extend to the degree to which you have assumed. In fact, after thought, it seems to me that you have exceeded the bounds set by good morals and professional ethics, and have violated conditions which it should not be necessary to incorporate in any instructions or authorizations to a federal employee of your experience.

There is often no impropriety and there is no law against a private citizen taking employment with any one of a number of employers. An engineer must, of course, seek work wherever obtainable, but an employee of the Government does not, in the very nature of the case, enjoy the same privileges. The law explicitly prohibits the enjoyment of two salaries from the Government, and executive orders in some cases act automatically in discharging a man from the service who accepts certain classes of employment from others. Thus, it is necessary for a man in federal employment to be more than usually cautious in accepting compensation from outside sources.

As one of the recognized permissible conditions, it has been long understood that even in the employ of the Government may occasionally deliver lectures or write articles outside of office hours, for which compensation may be received. It is the variable rule, however, that in so doing they shall not in any way interfere with their regular duties nor make the practice habitual without having a clear understanding and record of the matter.

For many years, for example, experts in the Geological Survey have been accustomed to give talks before educational institutions and scientific societies, these being considered desirable as methods of diffusing knowledge. They have usually done this without compensation, excepting refund of expenses or a small amount covering expenses. In no case has a notable fee been received without full understanding. In my own case, while in the Geological Survey, it was arranged that I should give a series of lectures at Yale. I have done so nearly every year, receiving \$100 per year to cover my expenses to and from New Haven and all other items connected with the preparation of material for the lectures. In every case, where I have given an occasional talk, I have received either the actual expenses or a lump sum in lieu of this, but in no case an amount which could be considered as a full fee for my services, the object, from my standpoint, not being personal gain, but the educational features of the work. This is the case also with Mr. Davis and Mr. Blanchard.

It is a well-established principle that, while an engineer or attorney may obtain employment from different persons, he can not be retained in the pay of persons or corporations having dealings with each other without the full consent of both parties. Particularly is this the case when the relations are those of buyer and seller.

The present case seems to me to violate all of these established principles and to involve not merely yourself but the entire organization in destructive criticism. The authority granted you in letter of February 24, 1908, had clearly in mind the current practice of making arrangements to deliver lectures under the auspices of some educational institution, lyceum, or organization engaged in the diffusion of useful information. There was no thought that it could be stretched to cover a case where you would receive a monthly compensation from a railroad company with whom you, as representative of the Government, have business dealings. The fact that you did not make a written memorandum of this would seem to indicate that you appreciate the impropriety, and the further fact that you stated that you were not deriving any personal gain, and that you permitted me to make this statement unchanged to others, adds to my convictions on the subject.

It should not be necessary for me to explain that the authority given you on February 24, 1908, does not permit you to make arrangements of this kind. The Southern Pacific system is presenting large claims to the Government for reimbursement of transportation, etc. You are the man in responsible charge of the examination of these claims. The fact that you are personally accepting compensation from the railroad for lectures or other purposes creates a presumption in the mind of every man that there is here a necessity for inquiry, at least. The further fact that it is a matter of public comment that the reclamation fund has been more largely expended along the Harriman system than elsewhere leads many minds to suspect collusion of some kind.

In the present attitude of public men it is easy for those who are looking for improper motives to claim that some cause other than physical conditions or intrinsic merit has led to what (in their opinion) appears to be favoritism toward this railroad system.

If they can point out that you have received moneys of the kind described, these suspicions will seem to be justified in part, and the entire service must suffer as well as yourself.

It is incumbent upon you to show that you have been working in good faith under an agreement with the railroad company to deliver these lectures, and that you have given value received for them, through the delivery of the lectures and not through any favor done to the company. You should immediately cease all such connections by which you profit personally, either directly or indirectly, through moneys derived from any person or corporation with whom, officially, you are doing business.

Mr. Davis on November 17 called upon you for report on this matter. This letter is intended, among other things, to expressly annul any authority you may seem to derive from my letter of February 24, 1908, authorizing lectures to be paid for by any persons or corporations other than those purely educational in scope.

It is expected that you will explain this matter fully to Secretary Ballinger and give me in writing the results of your conversations with him. In the meantime, in accordance with your expressed desire, I have endeavored not to comment upon the matter, other than to rescind my statement that you were not deriving any personal gain and furnishing the facts which are of record, leading up to the inspection by Mr. Huffer.

Very truly, yours,

F. H. NEWELL, *Director*

Mr. PEPPER. Letter of Director Newell to Doctor Lind, chief fiscal officer, under date of December 3, 1909. I ask whether this is—

Mr. DAVIS. I must correct myself. I do not think that is the letter. After glancing over it hastily. I am not sure that it is.

Mr. PEPPER. Just take your time about it and look at it because I want to tie up the letters to your testimony as much as possible.

Mr. DAVIS. This is a long letter of six pages.

The CHAIRMAN. You might introduce other documents while he is reading that, so we will not lose time.

Mr. DAVIS. No; I do not think that is the letter.

Mr. PEPPER. Letter of December 3, from Director Newell to Doctor Lind. I ask whether that letter was referred to by you, directing your attention particularly to the closing paragraph.

Mr. DAVIS. Yes.

The CHAIRMAN. That is admitted.
(The letter referred to is as follows:)

[FHN-IMP.]

DECEMBER 3, 1909.

Dr. E. G. LIND,
Chief Fiscal Officer, United States Reclamation Service.

DEAR SIR: In accordance with verbal instructions given by the Secretary of the Interior, you are hereby directed to proceed to Chicago as soon as practicable to take temporary charge of the Chicago office during the absence of Mr. E. T. Perkins, engineer in charge. It is the desire of the Secretary that you go very carefully into all the workings of this office and ascertain what, if any, economies can be effected without impairing the efficiency of the force.

The Secretary desires that the business of the Chicago office be confined to the prompt settlement of freight and express bills and to the routing of shipments and such purchases and information as may be requested by the field officers. The publicity work which Mr. Waite is carrying on under the direction of Mr. Blanchard may continue for a time, but should be strictly limited to Mr. Waite, one assistant, and stenographer, and to the answer of inquiries and such related work as will accommodate the public and give necessary information to settlers. The itinerant lecture business is to be entirely omitted.

The Secretary desires it distinctly understood that this assignment of yours is temporary, and that nothing connected therewith is to be construed as a reflection upon Mr. Perkins or his administration.

Very truly, yours,
(Copy to Mr. Perkins.)

F. H. NEWELL, *Director.*

Mr. PEPPER. Was that in connection with the testimony which you gave respecting the desire of the Secretary that nothing connected with the assignment of Doctor Lind should be construed as a reflection upon Mr. Perkins or his administration?

Mr. DAVIS. It is.

Mr. PEPPER. Telegram of December 3, 1909, Perkins to the Reclamation Service, and letter sent by Director Newell, apparently in response to that telegram under date of December 4, to Perkins.

The CHAIRMAN. Those are admitted.
(The papers referred to are as follows:)

[Telegram.]

CHICAGO, ILL., December 3, 1909.

RECLAMATION, Washington, D. C.:

Will you or Secretary authorize me come to Washington, leaving here eighth?

PERKINS.

[FHN-IMP.]

DECEMBER 4, 1909.

Mr. E. T. PERKINS,
777 Federal Building, Chicago, Ill.

DEAR SIR: Your telegram has been received as follows: "Will you or Secretary authorize me to come to Washington, leaving here eighth?" I have already written you that the Secretary desires you to come to Washington to talk matters over fully with him as soon as you are physically in condition to do so.

He has also given instructions for Dr. E. G. Lind, chief fiscal officer, to go to Chicago and make a very careful study of the office force, with a view to making recommendations upon which it may be possible to cut down some of the work there. The office has now been conducted a sufficient length of time to pass well beyond the experimental stages, and for us to put it on a definite routine basis.

Several matters have been established firmly in the minds of the Secretary, the chief engineer, and myself, as follows:

First. That a Chicago office is a desirable feature, especially in connection with the prompt settlement of freight and express bills, the routing of shipments, and the making of eastern purchases, and giving information required by field offices.

Second. That a central warehouse or purchasing agency is not a desirable feature. If the field officers are competent for their work, they should be the best judges as regards details of purchases, especially of the character of business which we will presumably transact during the next few years.

Third. That the consensus of opinion of the best men in the field is that, while the Chicago office has great utility within certain lines, it is not a source of true economy along all of the lines which we have discussed. In fact, it has been thoroughly impressed upon all of us that it is only in accordance with drastic instructions from the director that the Chicago office has been utilized in many instances, and that results have not been as satisfactory as has been expected.

In other words, the Chicago office as a purchasing point is of great benefit but has its limitations, and these limitations must be recognized in considering future work.

The publicity or settlement work, which has been carried on by Mr. Waite, has been limited by order of the Secretary of the Interior to relatively narrow lines, under the immediate direction of Mr. Blanchard. It is apparent that public interest has now been aroused to such point that there is very little need of calling attention to western opportunities, and as far as we are concerned, we should concentrate upon calling the attention to the opportunities for homestead entry upon reclaimed lands.

In short, the activities of the Chicago office may now be defined and properly limited within a relatively narrow sphere, and the expenses of the office cut down accordingly, especially as the expenditures from the reclamation fund during 1910 will be far less than any preceding year.

The work in the future must be routine in character and handled by men who have shown capabilities for systematically and persistently "sawing wood" along lines prescribed by this office. The period of initiation has passed, and it is our desire to limit the activities to those which experience has shown to be essential.

There are too many large salaries in the Chicago office consistent with this routine, and the first problem to be studied by Doctor Lind, using the experience he has attained in similar studies throughout the field offices, is what to recommend in the way of reduction.

This brings up the matter which I have been considering since I talked with you. It is obvious that you have attained, in connection with the activities of the Chicago office, a wide acquaintance and an experience which will practically be lost to you in routine work. I very much doubt whether you can, after these years, adapt yourself to the process of "sawing wood." In any event, I doubt your success at it. On the other hand, there never was a time when there was so much interest in western activities and when there was such an opening for a man of your experience. It would seem to me the part of wisdom for you to grasp the opportunity and make use of the experience and friendships acquired by you and get into private or corporate work. I see no future for you in the Reclamation Service. It already has a large number of experienced engineers, many of whom are being furloughed on account of reduction of work. The same reduction affects the Chicago office to some extent, but the fact that most of our work in the future will be operation and maintenance will affect it still more.

I wish you would consider this very carefully, as it seems to me to be a waste of energies for you to plan and to hope to build up the Chicago office. It has in the opinion of everyone, I think, reached its maximum, and should be continued simply as a routine organization, one in which you would have little opportunity for display of your abilities.

Very truly, yours,

F. H. NEWELL, *Director.*

Mr. PEPPER. Letter of E. T. Perkins to Director Newell, dated December 6, 1909. Mr. Chairman, with your permission I will ask the stenographer whether I read the date of that telegram as being December 30?

The CHAIRMAN. The telegram is dated.

Mr. PEPPER. There is a little obscurity here in the print and it turns out to be December 3, and I want to be sure the stenographer gets it right, because that keeps the chronology. Then, as I have already said, letter of Perkins to Director Newell, dated December 6, 1909.

The CHAIRMAN. That is admitted.

(The letter referred to is as follows:)

[Subject: Report.]

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
777-779 Federal Building, Chicago, December 6, 1909.

The DIRECTOR UNITED STATES RECLAMATION SERVICE,
Washington, D. C.

SIR: I am in receipt of your letter of November 17, 1909, relating to the payments which have been made to me by the Union Pacific Railroad for personal services in connection with lectures delivered. You request to be informed of my authority for such action. In reply I desire to call to your attention my letter to you of February 14, 1908, and your answer of February 24, 1908, in which specific authority is given me to deliver lectures and receive payment therefor, provided that it is done in my own time and does not interfere with the daily routine of the office.

Acting under this authority, after several months of negotiations, I entered into an agreement in August of this year with the Union Pacific Railroad to deliver in Chicago and vicinity six lectures per month on "Reclamation of arid lands," under which I was to arrange for hall, lantern and operator, and publicity and receive \$50 for each lecture so delivered. Up to the present time I have delivered 20 lectures in various portions of this city and vicinity, and have received \$1,000 in payment for these services and incidental expenses. The lectures have been delivered entirely outside of office hours and have in no way interfered with or been connected with the routine work of this office.

I particularly desire to emphasize the fact that the delivery of these lectures has had no connection with the so-called "black-tent publicity campaign," under which I have expended funds placed in my hands by various western interests. These two matters have had no connection whatsoever, and this fact is distinctly so stated in letters of authorization from the Union Pacific officials to their disbursing agents to make such payments.

I consider that in receiving this extra compensation I was acting clearly within the authority given me in your letter of February 24, 1908. The lectures are exactly as specified in my letter of February 14, 1908, before schools, churches, clubs, and chautauquas, and, as in the case of others, are educational entirely, there being no mention of any interests or any special localities, the work of the Reclamation Service being my entire theme.

Respectfully,

E. T. PERKINS, *Engineer in Charge.*

Mr. PEPPER. Letter of Acting Secretary Frank Pierce, dated December 11, 1909, addressed to J. B. Callahan.

The CHAIRMAN. Admitted.

(The letter referred to is as follows:)

DECEMBER 11, 1909.

SIR: You are hereby directed to proceed at the earliest possible date to Chicago, Ill., where you will conduct an investigation into the Chicago office of the United States Reclamation Service, said office being located in rooms 777-779 federal building. Your investigations will embrace the following:

1. The methods of conducting business in the Chicago office of the Reclamation Service; that is, whether the methods pursued are the most effective, businesslike, and calculated to produce the best possible results.

2. Whether the same or better results can be attained by a different form of organization with greater or less force than is now on duty in the Chicago office; and whether in your opinion these results could be accomplished more readily and more economically at another location.

3. If, in your opinion, the branch office of the Reclamation Service should be continued at Chicago, you will submit your recommendations as to form of organization to be adopted and class of work to be handled.

In addition to the above instructions, you will thoroughly inquire into the official management of the work of this office, and particularly the relations which those in charge of this office have sustained to railroads or other corporations or officials of the same with whom the business of the office is transacted.

It is understood that Mr. E. T. Perkins, in charge of the Chicago office, has made arrangements with certain railway officials to carry on what are known as the "Black

tent lectures," the money collected and employed for this purpose being expended more or less directly in the name of the Reclamation Service.

You will call upon Mr. Perkins to produce before you all the accounts and data relating to this matter of which you will make a full examination and audit and a report of your findings thereon—in particular as to whether such subsisting arrangement is one calculated to be in the best interests of the public service. You will first call upon Mr. Perkins to submit a full statement in writing of all phases of what has been termed the "Black-tent lectures."

Information has been placed before the department to the effect that Mr. Perkins has made certain arrangements whereby he is to receive from certain railway officials the sum of \$500 per month to deliver lectures and to cover incidental expenses in connection therewith. You may call upon Mr. Perkins to submit to you in writing any statement which he may have to make concerning said charge; and, should he submit to you such statement, you will then attempt to verify his statement as far as may be possible from any data, writings, or accounts placed at your disposal.

In making this investigation and preparing this report, you should not only become familiar with the business of the office, but should consult fully with Mr. Perkins and also with Dr. E. G. Lind, who was detailed by director's letter of December 3 to ascertain what, if any, economies can be effected without impairing the efficiency of the force.

Doctor Lind will be instructed to give you the benefit of the results of his investigations and of suggestions for further investigations, after which he will return to Washington.

I desire to impress upon you that this investigation will be conducted on your part, as far as may be possible, with discretion and secrecy, and under no circumstances will you disclose any information secured by you in connection with this investigation to anyone, most particularly to representatives of the press.

While on this detail you will be allowed, in addition to your necessary traveling expenses, including Pullman fare on limited and unlimited trains, your actual necessary expenses of subsistence, not to exceed \$6 per diem, payable from the contingent expenses, Department of Interior, 1909-10, reimbursable from the reclamation fund.

Very respectfully,

FRANK PIERCE, *Acting Secretary.*

MR. JOSHUA B. CALLAHAN,
Office of the Secretary.

Mr. PEPPER. Letter of December 13, 1909, addressed by Director Newell to Dr. E. G. Lind.

The CHAIRMAN. Admitted.

(The letter referred to is as follows:)

[FHN—IMP.]

DECEMBER 13, 1909

Dr. E. G. LIND,
Chief Fiscal Officer, Chicago, Ill.

DEAR SIR: Referring to your instructions of December 3 to prepare a report upon the Chicago office, it is the desire of the Secretary that additional inspection be made, and accordingly he has instructed certain men from his office to take up this work.

You will confer with these gentlemen upon the presentation of proper credentials from the Secretary, and will advise or assist them to any extent which they may request.

Upon the proper intimation from them that your services are no longer needed, you will return to the Washington office.

Very truly, yours,

F. H. NEWELL, *Director.*

P. S.—Herewith are copies of letters of November 24, October 20, and December 3, relating to the work of the Chicago office, which I am sending you to hand to the gentlemen who have come out from the Secretary's office. It was intended to hand them these letters before they left, but the copying was not completed.

F. H. N.

Mr. PEPPER. Copy of telegram of W. E. Evans to Clement S. Ucker, chief clerk Department of the Interior, dated December 14, 1909.

The CHAIRMAN. That is admitted.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1841

(The telegram referred to is as follows:)

DECEMBER 14, 1909.

Chicago, Ill., 14th.

CLEMENT S. UCKER,

Chief Clerk Department Interior, Washington, D. C.:

Doctor Lind left Chicago without seeing us. Send us copy of his report to date and result of his investigations.

W. E. EVANS.

DECEMBER 15, 1909.

Mr. WARING E. EVANS,

c/o E. T. Perkins, 777 Federal Building, Chicago, Ill.

SIR: I hand you herewith copy of the report which Doctor Lind has just completed. It did not reach my hands until 4 o'clock this afternoon.

Respectfully,

CLEMENT S. UCKER, *Chief Clerk.*

DECEMBER 15, 1909.

W. E. EVANS,

c/o E. T. Perkins, 777 Federal Building, Chicago, Ill.

Lind's report goes forward to-night; should reach you Friday morning.

UCKER,

Chief Clerk of Interior Department.

Charge G. R.

The CHAIRMAN. May I ask a question there? The Mr. Evans and Mr. Callahan you refer to, were they employees of the Interior Department?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. What position did they have?

Mr. DAVIS. In the disbursing officer's office in the Interior Department.

The CHAIRMAN. Both of them?

Mr. DAVIS. I believe so; that is my understanding.

Mr. PEPPER. And reply of Chief Clerk Ucker to Mr. Evans of December 15, 1909, by letter, and a telegram of even date, Ucker to Evans.

The CHAIRMAN. Admitted.

Mr. PEPPER. Letter or report from E. G. Lind, chief fiscal officer, to the Director of the Reclamation Service, dated December 31, 1909.

The CHAIRMAN. Admitted.

(The letter referred to is as follows:)

[EGL-TEB.]

DECEMBER 31, 1909.

The DIRECTOR U. S. RECLAMATION SERVICE,
Washington, D. C.

SIR: On leaving I feel that I must put on record my conclusions with regard to the Chicago office, as it is apparent that results injurious to the service may occur as an outcome of the events of the past few months. The instructions from the Secretary practically forbade my discussing them, but as I am now going into other business of my own motion I am relieved of the official pressure and can and should speak freely of this matter, so that you may perhaps be able to guard the good name of the service. The men sent out by the Secretary will presumably justify Mr. Perkins in his actions, but whatever may be stated it is a fact that his continued presence in the service will be a menace to efficient and honest endeavor.

The Chicago office is an important and at the same time a most dangerous factor in the business management of the Reclamation Service. The man at the head of it must not only be skilled in the duties, but must be above suspicion. It has been shown that large suspicion does attach to the present management, and it is inevitable that the conditions will in the future be widely known and subject to unfavorable comment.

In brief, it is now established that Mr. Perkins had a secret arrangement with a leading Harriman official by which the financial agent of the Harriman line in Chicago delivered to Perkins each month a check for \$500, without knowing the reason for such payment and not having any accounting. At the same time Perkins, as agent for the Government, had the control of business affairs by which he could favor this road.

The \$500 monthly check was so cleverly concealed behind the so-called "black-tent" fund that it was only by the most searching investigation that it was found. Perkins, when charged with receiving money personally, denied this emphatically, and then when the falsehood was discovered made an effort to prove that he was talking about something else.

Going into the matter in logical order, it may be stated that in connection with the examination of business methods in the field offices, attention was continually called to the unsatisfactory condition of the Chicago office, and it was appreciated that some radical action must be taken to make this more effective if the field work was to be expedited.

In the winter of 1908-9 the attempt was made to put the Chicago office on a better business basis. The work had dropped behind very badly. There were continual complaints, and while, in my opinion, the trouble rested primarily with the head of that office, yet the attempt was made to see whether by introducing better system more satisfactory results could be obtained.

Perkins had been given full authority and every facility afforded him for developing the very best methods, practically no limit being placed upon the number or character of people to be employed. But he had failed to provide any effective system, with the result that when he became sick chaos reigned and the work dropped still further back.

Dissatisfaction of field men.—The dissatisfaction of the field men with the conduct of the Chicago office has been very intense, and it has required the authority of the Washington office continually exercised to compel the adoption of methods which, while theoretically excellent, have failed in part through lack of continuous attention by Perkins. It is, of course, easy out of the hundreds or thousands of instances to point out examples of success or failure of any method, and Mr. Perkins with the great opportunities offered him can claim credit in specific instances and show where he could have done better, if the field men had put matters in his hands, but in all of these complicated details it is not the exceptional case which should be considered but the continuous performance and uniformity of success attained month after month.

The reorganization effected during the early part of 1909, while it improved matters and tended to bring business more nearly up to date, was not as effective as it should have been, because of the fact that although Perkins had full authority over the office and had been given good advice and provided with ample means, yet he did not rise to the occasion, and in fact, during 1909, he neglected the business, devoting most of his attention to other matters.

His failure to give intelligent direction to the work was even more pronounced, and his absence from his desk became more and more apparent. Instead of giving his subordinates effective and consistent advice, his attitude was erratic and more of interference with systematic routine than of aid. His naturally restless disposition asserted itself in going into many matters which were not reported to the Washington office and which were kept concealed as long as possible. He afterwards attempted to justify this by saying that he had personal—oral—orders from the Secretary covering these violations of orders.

The weak point in regard to Perkins, and one which has been appreciated for some time, is his inability to systematize and to handle routine work. His strong point lies in his temporary enthusiasm, under the stimulus of which he will for a short period accomplish large results, followed by times when he neglects all routine duties or even interferes with his assistants by trying illy considered changes.

He claims great credit for saving vast sums of money by his personal relations with railroad men, but in this he greatly exaggerated the true conditions. The idea of entering into specific agreements with the various railroads in transportation of freight for the Reclamation Service seems to have been first suggested and put into practice by A. L. Fellows, engineer at Denver, Colo. After being approved by the department it was extended by F. H. Cass. The attention of Perkins was called to it at a time

when it seemed advisable to provide him with other employment from that on which he had been engaged. It was believed that with his genial manners and knowledge of the existing field conditions, he could be successful in still further extending these agreements. In this matter, he displayed considerable initiative and was quite successful, but it is believed that almost any other well-informed engineer of the Reclamation Service with his previous experience could have done as well. The special credit which he claims for this work can hardly be considered by anyone who has intimate knowledge of the development of the system.

On the other hand, his neglect of details of routine work to make these agreements fully effective more than compensates for any especial energy in getting the agreements.

The most serious condition, and one which can not be satisfactorily explained, is the receiving of money secretly from the Harriman system. Persistent rumors of so-called "graft" were afloat in the fall of 1909, but could not be traced. Perkins was asked definitely and unqualifiedly the question as to whether he did receive any money and he denied absolutely that he had done so, justifying himself afterwards by the allegation that he had in his own mind changed the subject to another matter, namely, the black-tent fund, and that his answer pertained to the black-tent fund and not the secret fund, which he asserted was not under discussion.

He succeeded in maintaining this secrecy until during the auditing of the black tent fund it was discovered that certain other checks than those for the black tent fund, each of \$500 per month, were being drawn in E. T. Perkins's name and delivered to him personally, and for which he was not submitting any vouchers nor explanations, nor did the railroad official who drew the checks know the purpose for which they were drawn. There was no auditing and no accounting for these sums, but it was understood that the money was paid to Perkins to be utilized by him without explanation.

This transaction justified the suspicions which had been afloat. The fact that a government employee who had in his hands business dealings with this corporation amounting to tens of thousands of dollars was receiving secretly from the corporation certain sums of money, is in itself damaging not simply to the reputation of the man but to that of the organization.

Much of the information given above I have obtained from Mr. Huffer, who personally audited Mr. Perkins's accounts, but I feel that it is only right that I should place both of us on record, so that when these matters are given the light of publicity—which will happen sooner or later—you will have something on file which may serve to protect the service.

Very respectfully,

E. G. LIND, *Chief Fiscal Officer.*

Mr. PEPPER. Letter from Secretary Ballinger to the Director of the Reclamation Service, dated January 14, 1910, covering the report or a copy of the report of December 27, 1909, made by Messrs. Evans and Callahan to the Secretary of the Interior, accompanied also by an affidavit of one K. L. Walker, dated December 7, 1909, and a copy, also, of a letter which—subject to correction—I state to be the same letter that had been written September 28, 1909, by Mr. Newell to Mr. Thomas Cooper, the president of the Northern Pacific.

Mr. DAVIS. Vice-president.

Mr. PEPPER. Vice-president.

The CHAIRMAN. That is admitted.

(The letters referred to are as follows:)

[Copy. TEB.]

THE SECRETARY OF THE INTERIOR,
Washington, January 14, 1910.

SIR: I have received the report of Messrs. Evans and Callahan of their investigation of the Chicago office of the Reclamation Service, made in pursuance of the directions given by me. I am also in receipt of a copy of the report upon this office made by then Chief Fiscal Officer Lind in pursuance of your instructions of December 3, 1909. Both reports have received careful consideration. Both reports reach the same conclusion as to the necessity for an immediate change in the methods of conducting the work of the office. In other respects the report of Messrs. Evans and Callahan appears to be the more impartial, and will therefore be used as a basis for carrying out the instructions herein given. A copy of said report is herewith.

The report states that the present methods of the office are far from businesslike, and that the instructions issued by your office to the persons in charge of the various branches of the Chicago office did not have in mind the consolidation of all the work of that office under one head who could be held responsible for the proper performance of the work of the entire office. The result is that the present organization consists of practically three separate offices, each with its necessary clerks and equipment, yet nominally under one head. This division of authority has tended to create discord rather than harmony, and it is believed is largely responsible for the apparent friction which exists among the employees. The office appears to have accomplished the work laid out for it in a manner as well as could be expected under the circumstances. That it has not been more efficiently conducted is unquestionably due to its organization and method of doing business. Messrs. Evans and Callahan state that in their opinion the future work of this office can be of great value to the service if properly conducted, and suggest that an organization somewhat like the following will be conducive to the best results at a minimum expense to the service:

General agent.....	\$3, 000
Chief clerk.....	2, 500
One clerk.....	1, 800
Two clerks, at \$1,500.....	3, 000
Two clerks, at \$1,200.....	2, 400
Four stenographers and typists, at \$1,000.....	4, 000
Messenger.....	720

17, 420

They further state that Mr. Perkins impressed them as possessing good administrative ability and of being fully competent to carry out the intent and purposes of this office when put upon a new working basis, as well as to reorganize the same.

With regard to the series of lectures recently given by Mr. Perkins in cooperation with certain railroads, with a view to advertising government reclamation projects, the report states that all of the accounts relative to the fund contributed by the railroads were carefully audited and found to be correct. From an examination of the statement of disbursements included in said report it appears that all of said expenditures were proper ones chargeable against said fund, and for reasonable amounts, and that properly receipted vouchers for all of said expenditures were secured.

With regard to the series of lectures given by Mr. Perkins in the interest of the publicity work it appears that in all, the sum of \$800 was placed to his credit, which fund likewise appears to have been expended under direction of Mr. Perkins in accordance with his agreement with the contributors. The details of the office work under this agreement, it is reported, were under the supervision of Mr. Waite. It further appears that in connection with this series of lectures no literature was distributed and that no partiality in treating of the projects in any given locality was shown, and, further, that Mr. Perkins, by reason of your letter of February 24, 1909, was under the impression that the permission contained in said letter was with the understanding on the part of the Washington office that he, Perkins, could properly receive compensation for the lectures to be given by him at no expense to the Government and upon his own time. The Chicago office is not now engaged in any publicity work outside that conducted through correspondence by Mr. Waite, and it is desired that this course be pursued in the future, and that all necessary and advisable publicity be handled by the Washington office, which Mr. Perkins was verbally advised.

To carry out the essential recommendations of Messrs. Evans and Callahan it is directed:

- (1) That immediate steps be taken to organize the office along the lines above suggested in order to eliminate all unnecessary employment and expense as well as to place the entire responsibility for the conduct of the office under one head.
- (2) That until otherwise directed Mr. Perkins be placed in entire charge of the office and held responsible for the efficient conduct and management thereof.
- (3) That the functions of the office be confined—
 - (a) To transportation matters in general as they now constitute the work of the office.
 - (b) To the purchasing of such supplies and materials as in the opinion of the supervising and project engineers could be secured through the said office at a saving to the Government. In this connection the facilities of the Chicago office should be utilized whenever possible.
 - (c) To the expediting of shipments of supplies and materials and related matters.
 - (d) That the settlement work of the service, in so far as the same is handled at Chicago, should be under the entire supervision of the Washington office.

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1) That monthly reports of the condition of work and amount of business transacted be submitted to you for appropriate action.
 2) In carrying out this reorganization Mr. Perkins should be given sufficient latitude to enable him to successfully accomplish the purpose of these directions at the earliest practicable date, and be held responsible for an efficient management of the office. It is so desired that Mr. Perkins be called upon to submit his views with regard to the bringing into effect of the above changes in the matter of the method of conducting the business as well as affecting the personnel of the office, with regard to which I would be pleased to be advised.

Very respectfully,

R. A. BALLINGER, *Secretary.*

Chief Director of the Reclamation Service.

DECEMBER 27, 1909.

12: Pursuant to instructions of the Acting Secretary of the Interior, of the 11th instant, we proceeded to Chicago, Ill., for the purpose of conducting an investigation of the Chicago office of the United States Reclamation Service, and respectfully submit the following report of our investigation:

We found the office to be in a very disorganized state and its methods, as now conducted, far from businesslike. While Mr. E. T. Perkins is nominally the officer in charge, the work is so divided that there is a "purchasing clerk," who signs all mail pertaining to purchases and carries on the work incidental thereto, with a clerical force entirely under his own supervision. The same condition obtains with regard to the work of the "transportation clerk." The head of the office does not seem to have authority or be permitted to exercise any control whatever as to the real and important work for which, it seems, the office was established. He opens and distributes the mail, but does not even sign the letters sent; nor is he consulted by either the officers above named in the transaction of the business of their respective branches. Upon inquiry as to the cause for this arrangement or condition of affairs, we were informed that the responsibility rests entirely with the Washington office. Mr. Perkins has apparently devoted all his time since August last to the work incident to carrying out the so-called "black-tent campaign" and the preparation of illustrated pamphlets relating to the various field projects. We treat later upon the subject.

The present office force consists of:

General administration.

Engineer in charge.....	\$3,300
Stenographer and file clerk.....	1,200
Stenographer.....	1,020
Messenger.....	600
	<hr/> \$6,120.00

Transportation branch.

Transportation clerk.....	2,280
Clerk.....	1,800
Two clerks, at \$1,200 each.....	2,400
One clerk.....	960
One stenographer.....	1,020
One stenographer.....	840
	<hr/> 9,300.00

Purchasing branch.

Purchasing clerk.....	1,980
Two clerks, at \$1,200 each.....	2,400
Two clerks and typists, at \$1,020.....	2,040
One clerk and stenographer.....	1,080
One clerk and stenographer.....	1,020
One clerk and stenographer.....	840
	<hr/> 9,360.00
	<hr/> 24,780.00

We are strongly of the opinion that an office at this point, and preferably at this point, properly organized and conducted, will be of great value to the service; and

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we recommend the following organization, by which, in our opinion, the work can be conducted in a systematic and satisfactory manner.

General agent.....	\$3,000. 00
Chief clerk.....	2,500. 00
One clerk.....	1,800. 00
Two clerks, at \$1,500.....	3,000. 00
Two clerks, at \$1,200.....	2,400. 00
Four stenographers and typists, at \$1,000.....	4,000. 00
Messenger.....	720. 00
	<hr/> 17,420. 00

We beg to state that it will be impossible for the efficiency of the office to be maintained unless the chief has absolute authority and is held responsible for the work of the office. He should be familiar with all the details of the work, have the confidence of his employees, and the hearty cooperation and support of his superiors. The work to be confined strictly to the purchasing of supplies for the various projects, the transportation of the same, auditing bills therefor, and the securing of concessions, etc., from the various railroads.

We learn from the records of the office, and upon inquiry, that the present head of the office, through his personal efforts alone, obtained contracts and concessions from the different railroads by which a saving was gained to the Government of \$1,300,000, covering the period from January 1, 1905, to November 30, 1909, \$575,000 of this amount being on shipments during the past eleven months. In this connection we desire to state that in our opinion the railroads have nothing to gain by making these concessions, other than the benefits derived from future settlement along the projects. Nearly all the present projects are reached by one road only, and consequently no favoritism could be shown in the shipment of freight, etc.

Under the proposed organization, the present methods would continue, with the exception of the vouchering work, which, we think, should be turned over to the fiscal agents at the projects, who have the necessary force to do this work and who ultimately pay the vouchers; no payments whatever being made at the Chicago office. The reason advanced for vouchering accounts at this office is that discounts on a certain class of purchases may be obtained by payment within ten days after delivery. There is no reason, however, why the fiscal agent at the project can not obtain the discount, in the same manner, by acting promptly.

There would, of course, be but the one set of files, where at present there are three; and there are other minor details or work that can be abolished, and which will suggest themselves to a proper executive officer.

This would also, as will be seen, merge the purchasing and transportation work under the one head, where it should have been originally.

The work of the office should be so conducted as to enable the clerks to become familiar with the duties of each other, no matter what classification of work may exist.

The proposed organization can be made from the present force. We find the gentlemen in charge of the branches named, to be most capable and efficient officers; and can say the same of the employees in their respective offices.

Mr. Perkins impresses us as possessing good administrative ability, and as being fully able to carry out the intent and purpose of this office.

Mr. Dick is a most efficient man, and thoroughly familiar with the office in all its branches, having had previous experience in the purchasing branch, besides being a competent railroad accountant.

Mr. Kirksey is also a very capable man and is conducting his work, under the present arrangement, in a businesslike and satisfactory manner. We do not think, however, that he possesses the qualifications to be at the head of the office. Being in poor health, the nature of which precludes his activity, he is confined to the office, while, in our opinion, the administrative officer should be able to visit the interests with whom business is conducted. It is often found necessary to ask certain favors at the hands of the railroad officials. For instance, the hurrying up of shipments, the securing of freight cars when the need is urgent, adjusting differences as to charges, and no doubt many other little matters pertaining to the work. So it will be seen that he should not only be an active man, but should also possess tact and be of pleasant address and bearing. Such results are not obtained, to our thinking, by mere written requests.

The gentlemen named gave us every assistance in our work, answering questions and furnishing information most cheerfully, and they agree with us as to the urgent necessity of reorganization of the office, the consolidation of the work under the one head, and the consequent reduction of the force.

"BLACK-TENT LECTURES."

Under a plan of cooperating with various western railroads in advertising the reclaimed lands, with a view to promoting settlement at the various projects, an agreement was reached by which the Chicago and Northwestern, Atchison, Topeka and Santa Fe, Union Pacific, Southern Pacific, Oregon Railroad and Navigation Company, and Oregon Short Line, through Mr. W. G. Neimyer, general agent of the Union Pacific Railroad Company, acting for said roads, placed to the credit of Mr. E. T. Perkins at various times sums of money aggregating \$8,000. This fund was used as carrying on the so-called "Black Tent lectures."

Audit of Black Tent lecture fund.—We called upon Mr. Perkins for all papers, vouchers, or receipts, paid checks, and his bank book. Everything we asked for was furnished us without hesitation, and every facility was given us to make a complete examination. Our first action was to have the bank book balanced, in order to show the checks paid in detail and the unexpended balance on hand. Then we verified the amounts received by statements from the railroads showing the contributions for this work. We found that all the funds received had been expended, and proceeded to determine the nature of the expenditures and the correctness of the vouchers and receipts submitted. We found vouchers or receipts for each expenditure; that all payments had been made by check and were supported by paid checks in our possession. The expenditures seemed to have been reasonable, and were fully and accurately accounted for. Following is a statement of receipts and expenditures, showing under a few general heads the nature of the expenditures. We advised Mr. Perkins to ask for authority to turn over to the railroads or to dispose of the "Black Tent lecture" equipment.

STATEMENT—BLACK TENT PUBLICITY CAMPAIGN.

(December 22, 1909.)

Amounts advanced.

1909.		
Aug. 16.	To E. T. Perkins.....	\$1, 400. 00
21.	To A. L. Lomax.....	200. 00
Sept. 3.	To E. T. Perkins.....	500. 00
13.	To E. T. Perkins.....	400. 00
20.	To E. T. Perkins.....	1, 000. 00
Oct. 11.	To E. T. Perkins.....	1, 000. 00
Nov. 1.	To E. T. Perkins.....	1, 000. 00
17.	To E. T. Perkins.....	1, 000. 00
26.	To E. T. Perkins.....	1, 500. 00
		<hr/> 8, 000. 00

Disbursements.

Miscellaneous expense.....	\$2, 670. 84
Chicago office.....	607. 50
Stereopticon outfit.....	327. 31
Equipment.....	534. 58
R. A. Maynard.....	1, 368. 83
Mila T. Maynard.....	301. 64
Verne W. Mackey.....	517. 18
W. W. Paton.....	225. 01
Eugene Frank.....	637. 38
J. D. Reeve.....	728. 37
E. T. Perkins.....	63. 71
G. W. Westerdahl.....	17. 65
	<hr/>
	8, 000. 00

Under a personal agreement between Mr. E. O. McCormick, assistant traffic director of the U. P. R. R. Co., etc., and Mr. E. T. Perkins, there was placed to the credit of Mr. Perkins at various times the sum of \$800, to be used in maintaining an office in Chicago to distribute literature, etc. The details of this office work were practically under the supervision of Mr. J. C. Waite, of the settlement bureau audit.

We found the expenditures for this work supported by proper vouchers and receipts from the persons who rendered service or furnished supplies, excepting some small expenditures for lunches for various persons visiting Chicago in the interest of the

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publicity work, which expenditures were supported by memoranda and receipts given by Mr. Perkins.

The following statement will show the receipts and expenditures for this fund:

MAINTENANCE OF PUBLICITY OFFICE.

(Outside of Federal Building.)

Funds advanced by general agent, U. P. R. R.

1909.		
Aug. 2.	For office maintenance	\$200. 00
Sept. 3.	For office maintenance	200. 00
Oct. 11.	For office maintenance	200. 00
Nov. 1.	For office maintenance	200. 00
		<hr/> \$800. 00

Expenditures.

Office rent	270. 00
Temporary and emergency employees	99. 35
Office equipment	219. 56
Office maintenance	148. 81
Miscellaneous expenses	45. 35
	<hr/> 783. 07
Balance on hand	16. 83

The balance of \$16.83 is covered by outstanding liabilities.

Under this same arrangement between Messrs. McCormick and Perkins, the latter was engaged to deliver 24 lectures, covering a period of four months, at the rate of \$50 per lecture, or \$1,200 for the series. These lectures were in the interest of the publicity work, and were to be given in or near Chicago. Mr. Perkins, at the time of our visit, had delivered 17 of these lectures, and had 7 yet to deliver; and states he has the verbal authority of the Secretary, given to him while in Washington, to complete his contract with the railroads for the remaining 7 lectures, when all such work shall cease. No account was kept or rendered for this fund. On Friday evening, December 17, it was our privilege to attend one of these lectures, given in a school building at Southport, on the outskirts of Chicago. The lecture was interesting, instructive, and was well attended, about 300 people being present. This attendance was below the average, owing to unfavorable conditions, the night being very cold and it being near the Christmas season.

All the expenses necessary to the conduct of these lectures, such as renting halls when necessary, obtaining slides for the lantern, and hiring a man to operate the lantern were to be borne by Mr. Perkins out of the \$50 per lecture paid him by the railroads. We have endeavored to learn from the railroads (from outside parties as well as from the office force) whether or not any partiality has been shown for any particular projects, or that any railroad has been favored in these lectures. The railroad officials we have had conferences with speak very highly of the lectures and the lecturer, and say the lectures have been of great benefit in getting before the people lands awaiting settlement, which the Government has no money to advertise or exploit. The lecture we attended was certainly impartial, and treated of projects both in the Northwest and the Southwest. No literature was distributed, nor was reference made to any railroad line in this lecture. We do not feel that the Government has been injured by these lectures, or that Mr. Perkins has acted in bad faith; nor can we find that it has in any way interfered with his official duties, or that any of the work was done during office hours. We believe that Mr. Perkins has given value received for the twelve hundred dollars (\$1,200), or \$300 per month for four months, paid him by the railroads, and that it was paid by the railroads only in the interest of the scheme of advertising the lands, and not that it would bring any business to them through Mr. Perkins. The Government has received from the railroads concessions which have saved to the service one million three hundred thousand dollars; and these concessions were made by the railroads to the Government to aid in reclaiming these arid lands. This the railroads think is good business policy, believing their returns will come when the lands are settled upon and they will gain the new business resulting therefrom. To show the interest of the railroads in these lands, and their wish to get the people on them, Mr. McCormick, of the Union Pacific Railroad Company, told us that the railroads were going to make a special or settlement rate of \$30 instead of \$52 from Chicago to California, to induce the people to go and take up these lands. Mr. McCormick also told us that it was mostly through the *personal* efforts of

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Perkins that the railroads were induced to grant the valuable concessions above mentioned to the Government, and that it was through the personal efforts of Mr. Perkins that many of the favors shown the Reclamation Service, such as obtaining supplies and immediate shipment of supplies and materials to the projects, were obtained. I am sure that the authority for Mr. Perkins to enter into contract with the railroads to give these lectures, for which he received compensation, he considered ample, under the letter from the Director of the Reclamation Service of February 24, 1909, and he, Mr. Perkins, was under the impression that the director was aware of the fact that he was receiving compensation for the lectures, as he had verbally informed the director of that fact when he (the director) was in the Chicago office on September 28, 1909. (See copy of letter of Miss Kathryn L. Walker, junior clerk, herewith.)

Very respectfully,

W. E. EVANS.
JOSHUA B. CALLAHAN.

The SECRETARY OF THE INTERIOR.

Kathryn L. Walker, junior clerk in the employ of the United States Reclamation Service, was present during an interview, September 28, 1909, between Mr. F. H. Well, director, and Mr. E. T. Perkins, engineer in charge of the Chicago office, and I unavoidably overheard their conversation regarding the "Black-tent publicity campaign." I distinctly remember the statement of Mr. Perkins that he was receiving extra compensation for lectures delivered, but that it had nothing whatever to do with the "Black-tent publicity campaign." I can not recall the exact words, but my recollection is very clear as to the substance of what was said. The statement was made just as Mr. Newell was beginning the dictation to me of a letter, and it is probable that he did not hear or fully understand the statement. For this I am willing to make affidavit.

(Signed) KATHRYN L. WALKER,
Junior Clerk.

CHICAGO, ILL., December 7, 1909.

SEPTEMBER 28, 1909.

THOMAS COOPER,
Northern Pacific Railway Company,
St. Paul, Minn.

DEAR SIR: Referring to your conversation of last evening, I at once took up the matter with Mr. E. T. Perkins on my arrival here and have looked over the correspondence and methods. The matter seems to be carefully conducted and the management of receipts and expenditures kept in such a way that all vouchers can be checked, showing the expenditure of every dollar contributed by the various railroads. The matter seems to have been initiated largely by Mr. Ballinger, the Secretary of the Interior, when he was in the Chicago office—hence the details were not referred to our Washington office. At his suggestion, every western railroad was given an opportunity to contribute, and also various western organizations. The principal companies who have availed themselves are the Santa Fe, the Northwestern, Union Pacific, Southern Pacific, O. R. & N. Co., Oregon Short Line, etc. The matter was brought to the attention of Mr. Eustis, of the Burlington, to be presented to the Northern Pacific and Great Northern, but I understand that Mr. Eustis declined on behalf of all three of the roads.

The expenditures are all made by Mr. Perkins and vouchers taken covering all bills. I can assure you that Mr. Perkins does not profit financially, directly or indirectly, although it is understood that upward of \$100 per month may be utilized by him for personal expenditures—such as railroad fare, subsistence, etc.—in connection with his personal supervision.

The method has been explained to you, I think, quite freely. Each person who attends to the lecture fills out a card, giving his name and address. Each person is also given a card, copy of which is inclosed, stating that for information concerning the homes on United States Government lands, apply to J. C. Waite, settlement agent, 777 Federal Building, Chicago, Ill.

As the names of the people are received, Mr. Waite sends to each a copy of the letter inclosed herewith, on which the name and address is inserted with typewriter. This letter you will note refers particularly to five projects on which government land is available. Of these five, you will note that three of them, namely, the Shoshone project, Wyoming, and the Huntley and Sun River projects, in Montana, are in our territory; so that although the three northern roads do not contribute to the expense, no discrimination is made in sending out information. On this point, also, I have advised Mr. Perkins that it would be wise to insert in the lectures lantern

slides relating to all of these projects, so that there can be no claim of discrimination in favor of the roads who are contributing to the expenses.

There is also being prepared a series of statements concerning the reclamation projects, each pamphlet to be uniform in size with the others and prepared to fit into the ordinary envelope. Inclosed herewith is copy of the statement concerning the Truckee-Carson project. The material for these statements is prepared by the Reclamation Service, the manuscript is submitted to all persons interested for revision, and the printing is paid for by the railroads out of this general fund. This is modeled on the pamphlet printed by the Great Northern on the opening of the Sun River irrigation project in Montana, of which we purchased, I think, 10,000 copies for distribution.

I will have a carefully prepared statement made regarding the whole matter so that the records will be complete. So far as I can see at present there has been no intentional favoritism; in fact, in the material sent to the persons who attend the lectures there is, if anything, a bias toward the northern projects rather than the southern.

Referring to letter of September 22 from Mr. Morris Bien, acting director, it appears that the statement, "The expenses of this work are paid for by the Burlington road, etc.," is due to a mistake in transmittal of telegram from Mr. Perkins, which reads exactly the reverse.

Very truly, yours,

(Signed) F. H. NEWELL, Director.

Mr. PEPPER. Mr. Chairman, to the best of my belief, the documents that I have now offered are all the documents that were referred to by Mr. Davis in his testimony, and they include the reports to which Mr. Vertrees has referred. I make that statement because I want to call to the attention of the committee that there are a number of other documents which came up in the same pile. I have not examined any of them critically enough to know their bearing on this particular matter. They are produced, and upon further examination I may ask the committee's leave to offer more.

The CHAIRMAN. Very well; you will get that opportunity. Are you through with the witness?

Mr. PEPPER. I have one or two questions I want to ask him. Mr. Davis, subsequent to the receipt of the report of Messrs. Evans and Callahan, will you state what action, if any, was taken?

Mr. DAVIS. I saw the Secretary in his office regarding that matter, and he spoke—

The CHAIRMAN. When was that? Please state about the time as near as you can.

Mr. DAVIS. Early in January. I do not remember exactly.

The CHAIRMAN. January of this year?

Mr. DAVIS. Yes.

Mr. PEPPER. The letter of Secretary Ballinger to the Director of the Reclamation Service, inclosing a copy of the Evans-Callahan report, bears date January 4, 1910.

Mr. DAVIS. Yes; I think somewhere about January 11 was the date of my interview.

Mr. PEPPER. Did you know of the Evans-Callahan report before that time?

Mr. DAVIS. Well, I am speaking of the date on which I learned of the Evans-Callahan report.

Mr. PEPPER. What was the date?

Mr. DAVIS. I am not sure about the date. I do not have a note of it.

Mr. PEPPER. The date of the report is December 27, 1909.

Mr. DAVIS. Yes. Some time early in January I called in the Secretary's office and we had some conversation about this, and he spoke of having received a report, the Evans-Callahan report, and some comment was made on it, and I think he offered to show it to me. At

any rate, I expressed a desire to see it, but I did not see it until after action was taken in the case. The Secretary sent the report over to the director with an order to put into effect the recommendations of the report, not exactly, but substantially as defined in the Secretary's letter. That will be in evidence, of course. And that was the first that the Reclamation Service had seen of the Evans-Callahan report or knew of the essence of its contents. The Secretary had indicated that it was not in accordance with the reports rendered by Huffer and Lind. But that was as far as I knew of its character; and shortly after this interview I went West, so that the Secretary's order, which accompanied the report, came during my absence, and I received a copy of that in El Paso, Tex.

Mr. PEPPER. And is that the order which, so far as you know, is in force to-day?

Mr. DAVIS. It is, unless it has been revised very recently. It is the one that directed the work to be put into Perkins's charge more fully, claiming one reason of inefficiency was the interference of the Washington office; that Perkins did not have full enough authority, and certain reductions in the force were ordered. The report will speak for itself.

Mr. PEPPER. So far, then, as you know, this gentleman is still in the government employ?

Mr. DAVIS. Yes, sir; he is still in charge of the Chicago office. Of course, while he reports nominally to the Washington office, of course the Washington office has no control over him now.

The CHAIRMAN. What do you mean by that—the Reclamation office?

Mr. DAVIS. Yes, sir; of course the Secretary has, although he reports directly to the Director of the Reclamation Service.

The CHAIRMAN. He reports directly to the Director of the Reclamation Service?

Mr. DAVIS. Yes, sir.

Mr. JAMES. Mr. Davis, did you state that Mr. Perkins got expenses from the Government besides his salary?

Mr. DAVIS. He does, on certain occasions, when traveling. He is then entitled to receive expenses. I do not know whether any were paid during this interval I have been describing. He received his salary.

Mr. JAMES. During the black-tent campaign, you do not know whether he received, in addition to his salary, his expenses?

Mr. DAVIS. I do not now recall; no.

Mr. JAMES. I believe you did state that he was getting \$200 from these lectures and \$300, for his expenses from the railroad?

Mr. DAVIS. Yes, sir.

Mr. JAMES. From whom could we ascertain whether or not he was getting his expenses?

Mr. DAVIS. That could be ascertained in our office.

The CHAIRMAN. Mr. Davis, as I understand it, before this time the lecture business to some extent had been carried on under his direction at Chicago?

Mr. DAVIS. He had personally been here and there delivering a lecture when invited to do so by some college or other organization on reclamation subjects.

The CHAIRMAN. Was this with the permission and consent of the Reclamation Service?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. He was authorized to do that?

Mr. DAVIS. Yes, sir; I do not think their authorization carries any pay authority. It may have done so.

The CHAIRMAN. I mean to do that kind of work?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Or to employ others?

Mr. DAVIS. No. The authority extended merely to lectures, which did not interfere with his regular official duties.

The CHAIRMAN. Had he authority to employ others to lecture without expense to the Government.

Mr. DAVIS. No, sir. So far as the Reclamation Service was concerned, no.

Mr. PEPPER. And whether he had any authority is a matter in dispute or debate as between Mr. Perkins and the Secretary, is it not?

Mr. DAVIS. It is.

Senator FLINT. As I understand it, Mr. Perkins had been connected with the Reclamation Service since its organization?

Mr. DAVIS. Practically so.

Senator FLINT. What positions has he held during that time?

Mr. DAVIS. He first was placed in charge of topographic surveys in the Colorado River Valley. His previous experience had been as a topographer in the Geological Survey, so he understood that kind of work very well, and he was continued in that capacity until that work was completed, and then began the engineering investigations and plans on the Colorado River. But it soon developed that his engineering attainments were not sufficient to fill the bill, and he was put on other work.

Senator FLINT. When was that ascertained?

Mr. DAVIS. I do not recall the date, Senator.

Senator FLINT. About when?

Mr. DAVIS. I can not tell you. I suppose somewhere about 1904 or 1905.

Senator FLINT. Where was he transferred to then?

Mr. DAVIS. He was then made an inspector and traveled from place to place and was quite active in looking into affairs in various camps and checking up things that were not quite as they should be, and sanitation and bookkeeping and things of that kind. And he was quite useful for quite a while in that capacity.

Senator FLINT. That, as a matter of fact, carried an increase in salary?

Mr. DAVIS. I do not think he got any increase at that time; no.

Senator FLINT. But he had been increased in salary since he left the work on the Colorado River?

Mr. DAVIS. Yes, sir.

Senator FLINT. When did he first obtain an increase in salary?

Mr. DAVIS. I do not remember the date. I can get that information if you want it.

Senator FLINT. I wish you would get that and have it placed in the record.

Mr. DAVIS. Yes, sir.

Senator FLINT. After he finished this work of inspector of these various projects, what was the next work he was assigned?

Mr. DAVIS. Dealing with the railroads. One of the matters then in prospect or which had been accomplished was the establishment of the Chicago office, and one of the functions of that office is the handling of contracts which we have for special rates in freight shipments with the railroads. The man in charge of that office at that time was Mr. F. H. Cass, and Perkins had general charge of the project of getting these contracts from the railroads and adjusting them and of having them approved and various things that were pending for quite a while. And in that capacity Perkins had a sort of general supervision of Mr. Cass in the Chicago office, and finally was placed in charge of the Chicago office and has been there ever since.

The CHAIRMAN. Was he placed in charge by Mr. Newell?

Mr. DAVIS. Yes, sir.

Senator FLINT. That was really the most responsible position in the Reclamation Service, was it not, outside of the engineering work?

Mr. DAVIS. Outside of the engineering work I think we may say it was the most responsible fiscal position, yes, sir, in view of the large purchases that are made and the settlements with the railroads, and so on.

Senator FLETCHER. Did he have charge of the purchases?

Mr. DAVIS. There were some purchases that that office is commissioned to make at the request of the field projects.

Senator FLINT. During the time that Mr. Perkins has been connected with the Reclamation Service he has devoted more or less of his time to lecturing, has he not?

Mr. DAVIS. Not official time. I think, as far as I recall, his permission to do lecturing has been confined to such as would not interfere with other official duties. He may have delivered a few that took some more time, but I do not recall them.

Senator FLINT. Whether during official hours or not, he has been engaged during the time he has been connected with the service more or less as a lecturer?

Mr. DAVIS. Yes, sir.

Senator FLINT. And has acquired quite a reputation throughout the country in that way?

Mr. DAVIS. Well, I would hardly indorse that statement; he has some reputation, doubtless.

Mr. GRAHAM. Was that as a general lecturer, or was it lecturing with a view to popularizing reclamation theories?

Mr. DAVIS. Lecturing with a view to giving information regarding points where settlers might go and make homes. That was the object in authorizing any such thing as that by the Reclamation Service.

Mr. GRAHAM. Does the correspondence which has been offered show how long the black-tent campaign lasted?

Mr. DAVIS. I think it does. The Huffer report will show that.

Mr. PEPPER. I think you will find, sir, that it gives full particulars.

Mr. GRAHAM. Were there others who were employed in the Reclamation Service who were also earning money on the outside, or was he the only one?

Mr. DAVIS. There are others—we have some people who are employed per diem, and paid only when they work for the United States.

Mr. GRAHAM. Putting the question to cover his case, were there others who were receiving a monthly salary who were also earning money outside?

Mr. DAVIS. I do not know of any; no, sir; I think not.

Mr. PEPPER. Mr. Davis, it is a fact, is it not, that in the Reclamation Service there are individuals, officials—for instance, yourself and Mr. Newell—who will deliver lectures, occasional lectures, and receive expenses or an honorarium for that lecture?

Mr. DAVIS. Yes, sir.

Senator FLINT. Is that true of Mr. Blanchard?

Mr. DAVIS. I think so. I think Mr. Blanchard has received an honorarium for an article. I do not think he ever did for a lecture. I have written articles for the magazines myself for which I received pay.

Mr. GRAHAM. If you will pardon me. During the time the black-tent campaign lasted, did Mr. Perkins give his entire time to it?

Mr. DAVIS. That will show in the reports. I am not personally cognizant of that point.

Mr. PEPPER. Mr. Davis, are there any cases in existence that you know of, except this one, where pay of any kind, either per diem or monthly or annually or any lump sums, has been received by an employee of the Reclamation Service from those with whom you are doing business?

Mr. DAVIS. No, sir; I do not know of any other case.

Mr. PEPPER. It is a fact that through Mr. Perkins the Reclamation Service does much business with these big railroads, is it not?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. The Chicago office has jurisdiction not merely in purchasing and compensation matters, but also all routing of freight, has it not?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. And the custom of the Reclamation Service is an important matter to the railways?

Mr. DAVIS. Yes, sir. There is quite a large amount of money in it. That routing is done by the Chicago office. They attend to it, and trace the shipments, and so on; it is one of its functions.

Senator FLINT. The lectures that have been delivered and the articles that have been written by the officials of the Reclamation Service have all been along the line of drawing attention to the various projects, to the benefit of settlement on these projects?

Mr. DAVIS. No, sir; I have never written any articles of that kind. The only kind that I refer to in my case are technical articles for the engineering journals.

The CHAIRMAN. What position does this Mr. Blanchard hold in the service that you have mentioned?

Mr. DAVIS. He holds the position of statistician and has charge of what I have been referring to as publicity work. He has a few clerks under him, and they have much correspondence with settlers inquiring where they can go, and such information, and they distribute the literature. There is a circular concerning each project.

The CHAIRMAN. He is one of the men you referred to as lecturing?

Mr. DAVIS. Yes, sir; he has charge of that work.

Senator FLINT. Mr. Chairman, I would just like to ask one or two questions. Has there been any objection, in your opinion, to an

official of the Reclamation Service giving lectures outside of official hours, directing the attention of the people to various projects to the benefit of settlers upon those projects?

Mr. DAVIS. No, sir; if that were all.

Senator FLINT. I am just limiting it to that.

Mr. DAVIS. Yes. Of course, I mean by the limiting that he should not by that or any other means be receiving pay from a corporation with which he is doing a large business.

Senator FLINT. I am eliminating them from my question.

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Is that all?

Senator FLINT. Now, the objection mentioned by Mr. Hill, the president of the Great Northern, and Mr. Cooper, the vice-president of the Northern Pacific, was as to the place where the lectures were delivered and the character of the scenes presented to the audience; was it not?

Mr. DAVIS. Yes, sir.

Senator FLINT. In other words, that Mr. Hill was objecting to the fact that they were placing upon the scenes shown to the audience the projects in Arizona and southern California while the lecture was being delivered in Minnesota and the Northwest?

Mr. DAVIS. Yes, sir.

Senator FLINT. And he thought that was an injustice to his railroad to have that done?

Mr. DAVIS. Yes, sir.

Senator FLINT. Now, if the matter had been honestly conducted; that is, if there was no pay by the official, it was simply a supervision by Mr. Perkins of this plan, would there be any objection to delivering lectures of that kind providing that the railroad wanted to pay for it?

Mr. DAVIS. I think that it would be very bad tact, to say the least, to be delivering lectures solely for the benefit of one system or in the territory served entirely by another system. There would be that objection to it, it would be bad tact.

Senator FLINT. There would be the objection, just as has been brought out in this case, that they merely would have some fault against the Reclamation Service by reason of that?

Mr. DAVIS. Yes, sir. I want to say in justice to the Secretary of the Interior that all the evidence that we can get shows no genuine approval of what Mr. Perkins did. I do not give any credit to Mr. Perkins's claim that the Secretary authorized him to do what he did. There was some conversation on the subject, according to the memorandum that we have—a memorandum by an official of the service there who was present and wrote it out afterwards—which distinctly states that the Secretary prescribed that any cooperation from the railroads should be joined in by all or not entered into at all, and it was, of course, the policy in that instance. The Secretary made that very clear.

Senator FLINT. As a matter of fact, has not the Reclamation Service worked in harmony and accord with the transcontinental railroads ever since it was organized?

Mr. DAVIS. Yes, sir. On this subject of settlers and distributing literature, and the railroads paid for the literature.

Mr. OLMSTED. Would not that be injurious to the railroads where settlers now reside, to induce them to move on some other railroad system?

Mr. GRAHAM. Putting the question to cover his case, were there others who were receiving a monthly salary who were also earning money outside?

Mr. DAVIS. I do not know of any; no, sir; I think not.

Mr. PEPPER. Mr. Davis, it is a fact, is it not, that in the Reclamation Service there are individuals, officials—for instance, yourself and Mr. Newell—who will deliver lectures, occasional lectures, and receive expenses or an honorarium for that lecture?

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Mr. DAVIS. Yes, sir; he has charge of that work.

Senator FLINT. Mr. Chairman, I would just like to ask one or two questions. Has there been any objection, in your opinion, to an

compensation from the railroad that he was not entitled to, or by reason of delivering lectures in reference to one part of the country in the territory that was covered by another railroad and which would cause antagonism to the service?

Mr. DAVIS. Or otherwise favoring one system over another.

Senator FLINT. Or otherwise favoring one system over another.

Mr. DAVIS. Yes, sir; that is as I understand it.

Senator FLINT. As I understand it, from those who have attended these black-tent lectures, it was a lecture that was a fair presentation of the merits of the territory which they presented to the audience that evening?

Mr. DAVIS. Yes, sir.

Senator FLINT. And to set forth the benefits to the settlers who might go upon that project, and the manner in which the Reclamation Service had done the work?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Do you not think they rather overdrew the glories of the orange groves of California?

Mr. DAVIS. I did not hear those lectures, but it would be pretty hard to do that.

Senator FLINT. How long had the black tent been in existence before it was called to the attention of the Reclamation Service?

Mr. DAVIS. I suppose a little over a month; perhaps two months. I do not know exactly. The document will show. I think that is it, approximately.

The CHAIRMAN. How does it come to be called the black tent?

Mr. DAVIS. They were delivered in a tent black in color. This tent was purchased for the purpose of holding these meetings, and they were carried on at county and state fairs.

Mr. JAMES. Who performed the official duties of Mr. Perkins while he was absent on these tent lectures?

Mr. DAVIS. His subordinates in the office. The man in charge of the office in his absence. His name is Dick.

Mr. JAMES. Do you not think that is subject to some criticism; to have an official of the Government leaving the discharge of his duties?

Mr. DAVIS. I certainly do.

Mr. JAMES. And not performing his duties, and yet drawing pay for that while he is off lecturing for pay from a railroad company?

Mr. DAVIS. I most certainly do.

Mr. PEPPER. Mr. Davis, if I understand you correctly, this man, still in the service of the United States, is the man who undertook this black-tent campaign without, as you believe, any real authority from either the Reclamation Service or from the Secretary of the Interior?

Mr. DAVIS. That is my belief and my understanding of the situation.

Mr. PEPPER. And if I understand you rightly, you said that this was the only case within your knowledge in which there had been financial relations—the receipt of money by an officer or employee of the service from those with whom you are doing business?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. And yet in this particular case the matter of the influence or backing of this man was made a subject of statement to you by the Secretary of the Interior when the conduct of the man was under discussion?

Mr. DAVIS. That is true.

Mr. PEPPER. Does not that mean the beginning of a new era in the Reclamation Service?

Mr. DAVIS. It practically does, in my judgment, if it is to be a settled policy.

Mr. PEPPER. I have no more questions.

Senator FLETCHER. I have one or two questions to ask. After all the details in connection with Mr. Perkins's conduct, growing out of this black-tent performance, were brought to the attention of the Secretary of the Interior, and all the facts in connection with it, various reports on it, and so on, he still retained Mr. Perkins in the service and put him in charge of the Chicago office, practically responsible to him and not to the Reclamation Service direct, for his acts there?

Mr. DAVIS. Well, it is pretty hard to tell who he is practically responsible to; apparently no one. He reports to the Director of the Reclamation Service, but the director has been overruled in his opinion that Mr. Perkins is not a fit man for the place, and of course Perkins knows that, and it practically abolishes any authority the director or his assistants might have over Mr. Perkins, I think. He does not report to the Secretary.

Senator FLETCHER. In your statement a few minutes ago, you said that you did not mean to imply that the Secretary of the Interior had anything to do with this officer undertaking this work in the way he did, and that you did not attach any sort of criticism by reason of what was done in that connection. The fact is, however, that after all the details in connection with that were brought to the attention of the Secretary, he still retained Perkins?

Mr. DAVIS. Yes, sir.

Senator FLETCHER. In that position, and placed him in charge of the Chicago office?

Mr. DAVIS. Yes, sir.

Senator FLETCHER. Now I wish to ask you, recurring to another subject, if you will turn to page 1172 of the testimony. In the letter from the Secretary to Mr. Pattison he uses this language, referring to these withdrawals:

They cover a very large area of enterable agricultural lands, and were withdrawn through the Reclamation Service with no funds available for further investigation in that service.

And in the letter on page 1181 to Senator La Follette—about the middle of the page—he uses this language:

that the Geological Survey has on hand considerable accurate data and has an appropriation available for investigation of the subject.

Now I understood you to say that there was some \$8,000,000 to the credit of the reclamation fund; it was never less than that?

Mr. DAVIS. Yes, sir.

Senator FLETCHER. Is it correct to say that there were no funds in the Reclamation Service available for investigations in connection with these withdrawals?

Mr. DAVIS. That is a matter of interpretation as to what these funds could be made available for. There might be a difference of opinion on that. I think for a certain class of these power sites the reclamation fund could legally be used, but the comptroller might not so think, and the Secretary might not so think.

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Senator FLETCHER. Was there any data in the possession of the Geological Survey of great consequence which gave them any advantage over the Reclamation Service in connection with these investigations?

Mr. DAVIS. No, sir. About the only advantage that the Geological Survey has in that regard is a few unpublished topographic maps which could be used somewhat more conveniently by that bureau than by the Reclamation Service. On the other hand, the Reclamation Service has a large number of skilled engineers in various parts of the West who know a power site when they see it and can report on them to greater convenience and with greater efficiency than anyone in the Geological Survey, with the possible exception of one or two who could not be made available at least for very much of that work. The information in the possession of the Reclamation Service is not in the possession of the Geological Survey is, in my judgment, far greater than that in the possession of the Geological Survey and not in the possession of the Reclamation Service.

Senator FLETCHER. In other words, the Reclamation Service was better equipped for paring down these withdrawals or restoring the lands and subsequently making withdrawals than the Geological Survey?

Mr. DAVIS. With the exception of the matter of funds. It is a legal question how far the reclamation fund could be used for that purpose.

Senator FLETCHER. Was there any delay in the matter of investigation or any failure to investigate for the purpose of paring down withdrawals because there were no funds available in the Reclamation Service?

Mr. DAVIS. The time for that had not come; these withdrawals only began late in December of 1908, and none, or at least very few, investigations had been made. There may have been two or three cases, but they were made as the result of an investigation by the Reclamation Service. One was in the case of Lake Chelan. A withdrawal had been made of that for the purpose of conserving power, and that was made by an engineer of the Reclamation Service who found that all of the land necessary to control the power site was in private ownership, so that the withdrawal was canceled.

Senator FLETCHER. Now, you say that there were some funds undoubtedly available in the Reclamation Service for making those investigations?

Mr. DAVIS. In the case of those that could be reasonably considered reclamation power sites—that is, power sites for reclamation purposes—the reclamation fund was available. That, of course, is a matter of judgment, what sites could be so considered.

The CHAIRMAN. Did you not yesterday, in your testimony, state that you had had a conference with the Secretary about this matter as to the availability of your fund to apply in those investigations, and did not you and he finally concur in the idea that it should be carried on by the Geological Survey because they had a fund available?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. You testified so yesterday?

Mr. DAVIS. I did.

The CHAIRMAN. And it was in pursuance of that conference between you and the Secretary that he delegated the work to the Geological Survey?

Mr. DAVIS. Yes, sir; that is true.

Senator SUTHERLAND. Mr. Davis, the "reclamation act," so called, expressly appropriates all the money arising from the sale of public lands to the irrigation and reclamation of the arid lands of certain enumerated States. That is true, is it not?

Mr. DAVIS. It makes such an appropriation; yes, sir; but it is not confined to that.

Senator SUTHERLAND. What else?

Mr. DAVIS. It also authorizes investigations and surveys.

Senator SUTHERLAND. In connection with the reclamation of the land?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. But there is not any provision in the law which in terms authorizes the use of any of the fund for the development of power as such?

Mr. DAVIS. No; except for reclamation purposes.

Senator SUTHERLAND. That is, you could only use under the law these funds for the purpose of developing power intended to be utilized in pumping water to be used in irrigating lands?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. That would be the limit of the authority?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Are you through, Mr. Pepper?

Mr. PEPPER. Your attention has just been called to this Pattison letter, on page 1172, and I call your attention to the fact that it contains this statement, after referring to the restoration:

This accounts for the restoration and the direction to the Geological Survey, which is equipped with the means of securing the information desired.

If I understand your answers, in your examination, and in answer to the committee, the fact is that the question of funds accounted for the reference to the Geological Survey that had no relation whatever to the previously made restoration. Is that correct?

Mr. DAVIS. That is true; yes, sir.

The CHAIRMAN. The committee will take a recess until 2 o'clock.

(The committee accordingly, at 12 o'clock and 50 minutes, took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at 2 o'clock p. m.

TESTIMONY OF A. P. DAVIS—Resumed.

The CHAIRMAN. You may proceed with the examination.

Mr. PEPPER. Mr. Chairman, I had finished the examination except to ask one question. In the course of Mr. Garfield's, or perhaps in part of yours, Mr. Davis, a statement was made to the effect that there had been a notable or considerable number of resignations from the Reclamation Service during the past year. Is that a mistake or is it a fact?

Mr. DAVIS. It is a fact. There has been a number of them, but not very much greater than the normal, perhaps. The greatest difference is in the importance and the causes. There are a number of engineers, in fact most of our prominent engineers, with the record

of their work around them to show for them, who are occasionally receiving opportunities for employment from the outside. Their chief tie to the service is not the matter of salary, but interest in their work and loyalty to it, and the belief that they are appreciated, and that there is a future for them in the service. For instance, one of the supervising engineers who was receiving a salary, I believe, of \$4,500 from the Reclamation Service per annum was offered double the salary by a large contracting firm, with also an interest in the profits. He did not accept the offer. He has had a similar offer since and has turned it down. One of the other engineers has—

The CHAIRMAN. What engineer was that?

Mr. DAVIS. The first one? Mr. Louis C. Hill. Another engineer, Mr. I. W. McConnell, who was receiving a salary of \$4,800 per annum was, two years or so ago, offered \$8,000 by a firm in the line of business in which he is engaged, and he refused the offer. The offer was repeated about six months ago and he accepted it, and from his sentiments I think it was very largely due to the feeling that there was a change in the policy of the service. There has been the repeated announcement, not publicly, but that the engineers knew about, that the salary list is too high, which is practically an announcement that there is no future for them in the way of salary, and the policy of withholding confidence from the engineers and reducing the confidence that is reposed in them also has a similar effect. There are a large number of promotions that have been made in the interest of the service that have been held up a long time. In fact, there have been in the last six months always pending in the Secretary's office for a good many weeks at a time a large number of promotions that have been recommended by the supervising engineer, and indorsed by our office, but not approved by the Secretary. Very few have been turned down, but the postponement has the moral effect of convincing the men that even if they get promotions that they come grudgingly and they can not expect anything. We have had a number of resignations of men in lower positions, and some of them have taken the trouble to state in their resignations that it was due to the fact that the conditions were unsatisfactory in the service, and that same sentiment has been expressed by others who are still in the service. I have had men in the service ask me to pass the word to them so that they could resign in a body, as a protest against the handling of this service by the present Secretary. I have always discouraged that attitude and told them that that was not the attitude of true loyalty to the service, and have never encouraged it in any way; but some of the engineers feel very strongly on that subject. I had quite a conversation with Secretary Ballinger a week ago yesterday on these various points that I have spoken about, and yesterday I received this telegram from a supervising engineer:

[Telegram.]

[V 117; CH. BR. 27; Paid, Govt.]

HUNTLEY, MONT., *March 10, 1910.*

DIRECTOR RECLAMATION,
Washington, D. C.:

L. W. Stockman, engineer, and Otto Brackman, bookkeeper, resigned to accept materially better paying positions, crippling organization. Immediate confirmation recommended; promotions urgent.

SAVAGE

It appears that those promotions have been approved; they were approved very promptly, subsequent to my interview last 4th of March with the Secretary, but there are still a large number held up. The Secretary gives as a reason for this that he intends to reorganize the service. He gave me that reason a week ago yesterday, and that reason alone, aside from the matter of promotion, is one that spreads this same impression. Now, an organization like the Reclamation Service, with a large number of highly trained men, of necessity is a very difficult thing to build up to a state of efficiency, and the loss of a single man like I. W. McConnell, who resigned last summer, is, I am convinced, for the reason that I have stated, absolutely irreparable. If we can find another man like McConnell, we will have one instead of two, as we ought to have. It has been the constant effort and the chief function of the Director and myself to find the right kind of men; to recognize ability when we see it, and keep it satisfied with appreciation so that we can hold it. The highest function of administrative ability is that of recognizing ability in others and commanding it. The Reclamation Service does not pay high enough salaries to hold men by the inducement of the salary alone, and in my judgment it is unnecessary.

Past experience has shown that it is not necessary to pay as high salaries in order to command the same ability as is paid in the commercial world, but it becomes necessary if you deprive the men of the inducement to loyalty and pride in the service and the satisfaction that they get from the respect and approval of their superiors, and when that is withheld it removes an immense money consideration. I am convinced that the efficiency of the majority of the men who have remained in the service is very greatly decreased by the depression that has been produced by the unsympathetic attitude of the present Secretary.

Mr. PEPPER. Mr. Chairman, referring to another matter that was referred to in Mr. Garfield's testimony, I notice in to-day's paper a dispatch from Boise, Idaho, headed "Takes issue with Garfield." The statement is to the effect that the statement is sent to Washington by the Water Users' Association of the Payette-Boise project. The telegram, which is addressed to the Ways and Means Committee, is as follows:

The Interior Department, under Hitchcock and Garfield, gave the widest publicity to reclamation projects by lectures and literature at every national exposition and most state fairs. The Payette-Boise project alone has received 30,000 inquiries, and thousands of settlers, resulting from this publicity. The settlers were never warned against coming. They are here waiting for water. Statements minimizing these facts are cruelly and absurdly false.

Better lend thirty millions than throw the settlers into the city and add thousands to unemployed.

The CHAIRMAN. Evidently they need the "black tent" up there.

Mr. PEPPER. No; they seem not to need the black tent as much as the water, and in that connection, and in support of what Mr. Garfield has testified, I wish to put upon the record in connection with this telegram a copy of a Department of the Interior circular called "Circular.—Warning to persons intending to make homestead entries on lands temporarily withdrawn for irrigation purposes in certain States and Territories under act of June 17, 1902."

Senator SUTHERLAND. What is the date of it?

Mr. PEPPER. It is the original order approved by Secretary Hitchcock October 25, 1902, under the reclamation act, addressed to registrars and receivers in the various States where the projects exist, and after giving the warning, he concludes:

You will post a copy of this circular in a conspicuous place in your office and give the subject-matter hereof such general publicity as may be possible.

The circular in full is as follows:

[Circular.]

Warning to persons intending to make homestead entries on lands temporarily withdrawn for irrigation purposes in certain States and Territories under act of June 17, 1902.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 25, 1902.

Registrars and receivers, United States land offices in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

GENTLEMEN: You are hereby directed, in addition to the instructions contained in the circular of September 9, 1902, to call the especial attention of all persons that have made, or are intending to make, homestead entries on lands that have been, or may hereafter be, temporarily withdrawn for irrigation purposes, to the following statement:

"The withdrawal of these lands is principally for the purpose of making surveys and irrigation investigations in order to determine the feasibility of the plans of irrigation and reclamation proposed; only a portion of the lands will be irrigated even if the project is feasible; it will be impossible to decide in advance of careful examination what lands may be watered, if any; the mere fact that surveys are in progress is no indication whatever that the works will be built, and this fact can not determine how much water there may be available, or what lands can be covered, or whether the cost will be too great to justify the undertaking until the surveys and the irrigation investigations have been completed."

Attention is called to the fact that all the entries made upon the lands referred to are subject to the following proviso of the act of August 30, 1890 (26 Stat., 391):

"That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent a right of way thereon for ditches or canals constructed by the authority of the United States."

Under this provision of the law, should a homestead entry embrace land that is needed in whole or in part for a dam site, a reservoir, or a canal, the land would be taken for such purpose, and the entryman would have no claim against the United States for the taking of such right of way.

You will post a copy of this circular in a conspicuous place in your office and give the subject-matter hereof such general publicity as may be possible.

Very respectfully,

BINGER HERMANN, *Commissioner.*

Approved: October 25, 1902.

E. A. HITCHCOCK, *Secretary.*

Mr. PEPPER. I merely want this put upon the record in substantiation that Mr. Garfield's statement had been officially issued.

Senator SUTHERLAND. That is the land in those States?

The CHAIRMAN. Do you want the newspaper article in?

Mr. PEPPER. Just the telegram, just that which purports to be the telegram.

Mr. OLMSTED. Who signs the telegram?

Mr. PEPPER. The telegram is signed by the Payette-Boise Waters' Association.

Mr. OLMSTED. By any officer of it?

Mr. PEPPER. It is not stated. It simply purports to be the telegram of that association.

Senator SUTHERLAND. This public land surrounding these projects in many instances are thrown open to settlement, and the settlers simply take advantage of the law and locate the lands, and the absolute truth is that they are suffering for want of water, and the completion of some of those enterprises has been delayed, not owing to any fault on the part of the Reclamation Service, but owing to a lack of funds. I think it is clear to everybody who understands the situation out there that this \$30,000,000 loan ought to be made and made promptly. I think the telegram of the water users' association in that respect is quite correct.

Mr. PEPPER. The Senator will understand that in anything that I have said I do not pretend to make any statement to the contrary. I simply want to put in evidence an official document, or copy of one, which corroborates a statement of Mr. Garfield, which statement has been publicly denied. That is all. I did not mean to raise a question on the merits of the matter.

Mr. VERTREES. I would like to read this portion of the circular to the committee in this connection:

The withdrawal of these lands is principally for the purpose of making surveys and irrigation investigations in order to determine the feasibility of the plans of irrigation and reclamation proposed; only a portion of the lands will be irrigated, even if the project is feasible; it will be impossible to decide in advance of careful examination what lands may be watered, if any; the mere fact that surveys are in progress is no indication whatever that the works will be built, and this fact can not determine how much water there may be available or what lands can be covered, or whether the cost will be too great to justify the undertaking until the surveys and the irrigation investigations have been completed.

The CHAIRMAN. That is admitted.

Mr. MADISON. What do you know about that, Mr. Davis?

Mr. DAVIS. It is a fact that very soon after the passage of the reclamation act the matter was brought very emphatically to the consciences of the officers of the Reclamation Service that it was important to keep settlers off the land until we knew we could furnish them water. In fact, that was before the passage of the act, and that proviso was advocated not only by the Government, but also by Members of Congress, authorizing the Secretary to withhold that land from entry until it was ready for the settlers, but certain western Members, including, I think, chiefly, maybe solely, Senator Teller, took very strong ground against that. He said that law should not pass unless opportunity was afforded for this withdrawn land to be entered upon by homesteaders, and that no western man was fool enough to take land until he saw the water ready. That provision was put into the act. The land withdrawn for irrigation purposes was withdrawn from all forms of entry except under the homestead act. That exception leaves them open to homestead entry. Shortly after the passage of the act the Reclamation Service found that that difficulty was appearing repeatedly wherever we withdrew any land, and two or three times an effort was made to secure by argument a ruling by which the Secretary could temporarily withdraw land from all forms of entry until at least we could determine the feasibility of the project. The first lesson was in Nebraska, where it was turned down. It was all covered with shanties and filings all over it, mainly boosted by the people who

nted to sell lumber and their agents; but it was a severe lesson, and the Reclamation Service were criticised for it very unjustly.

We made every effort to get a ruling by which that land could be sold, but at that time we were unable to get it. Then we asked that the Secretary temporarily fix a farm unit at 40 acres, which was the lowest under the law that could then be made, thinking he, perhaps, had the legal right to do that, and that, perhaps, would keep settlers off until a larger farm unit was determined upon. That, also, was turned down. So that settlers were allowed this land only of the second class until Secretary Garfield came into office, and then he made the ruling that they could be withdrawn under all forms of entry. The argument put up to Secretary Garfield, it is only fair to say, was a stronger one than before, because

we had found out by experience that there were other reasons than that, principally one which gave it a certain aspect of legality, and such was this, that we had had the experience that in the early stages of our projects it was not possible to determine exactly what would be needed for construction, and for construction purposes the Secretary can, under the law, withdraw from all forms of entry. We found on the North Platte project that down in the midst of the project we surveyed, what had not been noticed at first, that we could build a few embankments and form reservoirs which were very valuable to the lower land in the project. There had been a number of entries in there that had to be extinguished in order to build that reservoir, and a good deal of embarrassment and expense was incurred. We found on the lower Yellowstone gravel and other materials for construction purposes, and those lands having been entered, we had to pay for it, and in some cases we had difficulty.

That, compiling all the difficulties, we finally got a ruling through the legal officers of the department enabling the Secretary to withdraw from all forms of entry the land that was needed for irrigation, and Secretary Garfield did that in every case where the argument could be put up in good faith on that ground, and did withdraw on a number of projects, including, for instance, the Belle Fourche. In the Belle Fourche project, through automatic action of the fixing of some farm unit plats, the lands that had been withdrawn under all forms were by that action opened to entry without intention on the part of the Reclamation Service. It was an oversight, but we found it out immediately and recommended to Secretary Garfield that this land be withdrawn under the first form to keep settlers out until we were ready for them.

Mr. MADISON. What about this Boise plant? It seems that the land under it was not withdrawn from entry.

Mr. DAVIS. That was taken before Secretary Garfield took office. The settlers had been on there for years, so the harm was done in nearly all the projects before that ruling was made.

Mr. MADISON. They have been there for years waiting for water.

Mr. DAVIS. Yes, sir.

Mr. MADISON. Why was that? What was the difficulty?

Mr. DAVIS. Simply because they believed there had been very eager surveys, even where those settlers were.

Mr. MADISON. What work had been done on the plant?

Mr. DAVIS. The principal area on which settlers are waiting for water are on the north side of the river, and nothing has been done there excepting surveys.

Mr. MADISON. There has not been any works constructed?

Mr. DAVIS. Not on that side of the river. The work has been constructed on the other side of the river, and extending the system on the south side of the river where the settlers have entered that land simply because they believed that it can be watered, and some day it will be watered.

Mr. MADISON. Is there any pressing necessity for the appropriation of this \$30,000,000 in order to relieve people like those?

Mr. DAVIS. That is a matter of opinion by Congress.

Mr. MADISON. Well, what do you think about it?

Mr. DAVIS. I think that the appropriation of \$30,000,000 would relieve all these cases in a reasonably short time; it would take two or three years to make the construction, but it would relieve eventually all those cases where settlers have been for a long time waiting for water.

Senator SUTHERLAND. Would not the appropriation of that money enable the Reclamation Service to complete these projects in a year—from a year to two or three years before it could otherwise be completed?

Mr. DAVIS. Oh, yes, sir.

Senator SUTHERLAND. And if they are completed then you will begin to get returns?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. From the water users themselves?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. That much sooner?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. The fund will be replenished that much sooner?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. And in addition to that the poor people who settle upon this land, many of them in a starving condition, will be able to cultivate their land and begin to raise crops?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. And make a living for themselves?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. That is the situation on any of those projects. is it not?

Mr. DAVIS. Yes, sir. Since the members have asked my opinion on this subject, there is a related matter in connection with the reclamation that I think is important and is continually embarrassing, and that is the provision requiring that funds be expended in the State in which they are received.

It is really embarrassing even to the States that it is expected to favor, and under the operation of that law it will be necessary to take up some new projects, unless that provision is repealed, before the other projects are completed.

Senator SUTHERLAND. You mean the original law?

Mr. DAVIS. Yes, sir; and if that provision were repealed and a ruling of the department or a law enacted, or whatever is necessary to put it in operation, enabling the people to proceed under some such scheme as Secretary Garfield put in operation for letting them build their own subsidiary work—the secondary work—those two together would, in my judgment, be in the long run more effective and more

uneficial to the project in general than the passage of this bonding bill, which carries interest with it, and will be an additional charge, of course, to the settlers. The relief to the settlers on the land will come largely by the fact that they would be allowed to build their auxiliary work.

Mr. MADISON. I do not believe I quite understood you. What did you say about the funds belonging to the several States?

Mr. DAVIS. The law provides that, subject to the existence of feasible projects, the major portion of the funds received from the sales of public lands in any State shall be expended for the benefit of the land of that State. That means that the States which sell a lot of public land have got to have irrigation works built there whether they are very attractive ones or not, if any possible ones can be found.

Mr. MADISON. Take, for instance, the State of Oklahoma. Only a small portion of that land would be possible of irrigation or that anybody would want to have irrigated.

Mr. DAVIS. That is true.

Mr. MADISON. But the fund for that State is very large, is it not?

Mr. DAVIS. Yes, sir; it is. We have not found any feasible project yet; that is, any that we considered feasible. People do not agree with us, but that is our judgment.

Senator SUTHERLAND. Mr. Davis, you were referring to section 9 of the reclamation act?

Mr. DAVIS. I believe that is the section.

Senator SUTHERLAND. Were you here when the act was passed?

Mr. DAVIS. I was in Washington; yes, sir.

Senator SUTHERLAND. Do you recall that there was a very sharp conflict of opinion with reference to that particular subject?

Mr. DAVIS. I do.

Senator SUTHERLAND. A number of the western Members and Senators were insisting that all of the funds arising from the sale of public lands in any particular State should be expended wholly within that State?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. And another number of Senators and Representatives quite strenuously insisting that the whole fund should be enlarged?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. And should be expended without reference to State lines?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. And that this section 9 was adopted as a compromise on those conflicting opinions?

Mr. DAVIS. That is true.

Senator SUTHERLAND. In order to prevent a deadlock and bring about the passage of the bill?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. Which otherwise would not have passed?

Mr. DAVIS. Yes, sir. Mr. Thomas Tongue claimed the credit of getting that provision through. He was a Congressman from Oregon.

Senator FLETCHER. Let me ask you a question. The act itself seems to leave a good deal of leeway on that subject. It provides "that it is hereby declared to be the duty of the Secretary of the

Interior in carrying out the provisions of this act, so far as the same may be practicable and subject to the existence of feasible irrigation projects, to expend the major portion of the funds arising from the sale of public lands within each State and Territory hereinbefore named for the benefit of arid and semiarid lands within the limits of such State or Territory."

Mr. DAVIS. That is the provision I refer to.

Mr. MADISON. How would the repeal of that provision act to relieve the situation?

Mr. DAVIS. It would relieve us from taking up any new projects. We could devote available funds to the existing projects.

Mr. MADISON. Taking into consideration the way in which the public land has been selling and money coming in, would there be sufficient for you to go ahead then and complete the work and build the works that are now under process of construction without a bond issue?

Mr. DAVIS. Not as rapidly as we could with a bond issue, of course; but it could be done; yes, sir. That is what I meant. It can be done more quickly.

Mr. MADISON. You think if the two things were done—if that section was repealed and if the plan that Secretary Garfield followed with regard to the issuance of the certificates was proceeded with—that there would then be really no necessity for the issuance of the \$30,000,000 bonds?

Mr. DAVIS. There would be less necessity for it, and what I stated was that I thought those benefits together would outweigh the benefit of the \$30,000,000 bond issue—that is, in the long run. Of course this bond issue is going to carry interest, which is going to increase the charge.

Mr. MADISON. And with this bond issue you will be able to complete projects that are now under process of construction?

Mr. DAVIS. But the present law means that we will have to apply it to some new projects.

Mr. MADISON. It will also mortgage the fund for the future for a good many years, will it not?

Mr. DAVIS. Yes, sir.

Mr. MADISON. It will make it almost impossible for you for a great number of years to begin any new projects anyway?

Mr. DAVIS. It will be a temporary relief, that is all.

Senator SUTHERLAND. While a temporary relief, Mr. Davis, it will enable you to be obtaining from the settlers payment for their water rights?

Mr. DAVIS. Sooner.

Senator SUTHERLAND. From a year to three years, perhaps earlier than you otherwise would do?

Mr. DAVIS. Yes; that is true.

Senator SUTHERLAND. That is, profits would be coming in and be used toward liquidating this temporary loan?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. And do you think that the advantages that will thus accrue will offset the interest charge?

Mr. DAVIS. Well, there won't be anything to offset it as an actual increase in charge on the land; it will actually make the project cost more because we will have to charge up the interest to the settlers.

Senator SUTHERLAND. That is true, but it will enable the people to begin to earn a living and get a return from their land very much sooner?

Mr. DAVIS. It will expedite the returns.

Senator SUTHERLAND. And enable the people to get the returns from the land much sooner?

Mr. DAVIS. That is true.

Mr. MADISON. I would suggest that you proceed.

Mr. PEPPER. I have no more questions.

Mr. VERTREES. Did you become acquainted with Mr. Ballinger when he was Commissioner of the Land Office?

Mr. DAVIS. Slightly; yes, sir.

Mr. VERTREES. So you became more intimately acquainted with him and associated with him when he became Secretary of the Interior?

Mr. DAVIS. Yes, sir; very much more.

Mr. VERTREES. You then were chief, or chief engineer of the Reclamation Service?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. I believe you have stated that Mr. Ballinger—that about one of the first things he did was to call for a conference with you?

Mr. DAVIS. Yes, sir. One of the first things he did when I got back.

Mr. VERTREES. I mean so far as you are concerned?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. You were the proper person, by virtue of your official position, for him to call upon for information, and the like, touching the Reclamation Service?

Mr. DAVIS. I was not the head of the service; no, sir.

Mr. VERTREES. But you were the chief of the engineers?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And supposed to be better acquainted with those practical conditions of the work than most anyone else in it?

Mr. DAVIS. I hardly think that would be correct. I was supposed to be, perhaps, more conversant with the engineering features, but the director was nominally and actually also more conversant with the other features.

Mr. VERTREES. I mean the field work, the situation of the plants, the projects, etc.

Mr. DAVIS. That is, so far as the engineering features are concerned.

Mr. VERTREES. That is the principal thing in the situation?

Mr. DAVIS. That was the most important.

Mr. VERTREES. Now, you understood from Mr. Ballinger that he was comparatively uninformed as to those matters, and sought information in regard to them?

Mr. DAVIS. Yes; he so stated.

Mr. VERTREES. Where did you say that first interview was?

Mr. DAVIS. In the Shoreham Hotel.

Mr. VERTREES. And you went over the matter at length with him?

Mr. DAVIS. About two hours were spent discussing the matter.

Mr. VERTREES. I suppose you were explaining the situation and he was making inquiries?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. You have stated that he mentioned various things which, as you described them, I believe were in the nature of criticisms?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Do you not think, Mr. Davis, that a more accurate statement of that is that Mr. Ballinger meant them not as criticisms, but that he meant to state to you those things which had come to his attention as criticisms that had been made by others, and he wanted information as to them?

Mr. DAVIS. He wanted information as to them. My understanding was that they were criticisms in which he believed; they were criticisms, I gathered, that had been heard from others, not from persons in the service, and not from his own contact with the service, but those which he had adopted as his own.

Mr. VERTREES. And from newspapers and others he had seen, he had gotten those ideas with reference to the situation?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And as a result of that he had formed conclusions more or less strong?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. For instance, as to withdrawals of the power sites, he asked you about those things?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And as to the condition of settlers, that they were practically living on promises?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. That works that had been promised and undertaken were dragging and were not completed?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. He had heard complaints on that ground?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And another point of objection, or rather what you call criticism, was the manner in which the work was being conducted; in this, that instead of letting it out to be done by contract, the Government was doing it directly with a force of its own?

Mr. DAVIS. Yes, sir; that was only partially.

Mr. VERTREES. Well, I say—

Mr. DAVIS. So far as that applied, that was one of the criticisms.

Mr. VERTREES. That was another thing?

Mr. DAVIS. That was on legal grounds.

Mr. VERTREES. He asked you to the extent to which that was being done?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And you explained that to him?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Then, he explained to you that he had heard what was called the "publicity bureau" considerably criticised?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. He asked you as to the nature and extent of its operation?

Mr. DAVIS. He did not state that he had heard the publicity bureau criticised; he criticised it himself.

Mr. VERTREES. What was his statement about it?

Mr. DAVIS. He said he was going to abolish it right away, absolutely.

Mr. VERTREES. Did you object to the abolition of that?

Mr. DAVIS. I did not. I explained its functions.

Mr. VERTREES. I mean, did you present any reasons why it should not be abolished?

Mr. DAVIS. I did.

Mr. VERTREES. And the result was that he did not abolish it right away?

Mr. DAVIS. That is true.

Mr. VERTREES. Did he say anything to you touching the matter of contractors, and that there was great complaint that the contractors were oppressed?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Of course, that point was a matter that came pretty close home to the engineers?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. For, under the contracts, as a rule, they were made the final arbiters of all kinds of questions, were they not?

Mr. DAVIS. The chief engineer was made the final arbiter.

Mr. VERTREES. The chief engineer was made the final arbiter, with the net result that many of those questions came up to you as chief engineer?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. He explained that he had heard complaints that you had been oppressive in your rulings, or rather harsh with the contractors?

Mr. DAVIS. He did not explain any complaint had reached him about my ruling.

Mr. VERTREES. He did not mean you individually, but he made the general statement?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. In point of fact, Mr. Davis, was not this situation that, whether it was their fault that they had made improvident and unintelligent contracts or your fault that you had ruled too harshly and oppressively upon them, without regard as to how that was, as a fact, was it not true that many of the contractors had failed and gone bankrupt who had undertaken to do this work?

Mr. DAVIS. Quite a number had.

Mr. VERTREES. You felt that it was their own shortsightedness and mismanagement and they, in a large measure, thought or pretended to think that it was your oppressive ruling?

Mr. DAVIS. Both of those, and another reason.

Mr. VERTREES. Understand me. I am not saying that you did rule oppressively.

Mr. DAVIS. I understand. I think that was the situation, with the addition that a great change in physical financial conditions had a good deal to do with it, which no man could foresee.

Mr. VERTREES. You mean by that that prices of labor and material had advanced?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. You would ascribe their bankrupt condition to that partly or wholly?

Mr. DAVIS. Partly; yes, sir.

Mr. VERTREES. But the point I asked was, if they did not claim and contend that it was partially, to a considerable extent, due to what they called your oppressive ruling?

Mr. DAVIS. Yes; I have heard that complaint myself.

Mr. VERTREES. Your situation was that of chief engineer, and final arbiter, and there to protect, as you thought, the interests of the Government? Of course, you did not mean to do injustice to anybody, but the slant of your mind and your point of view was from the Government's side, was it not, as chief engineer?

Mr. DAVIS. I think I am able to take a different view from that.

Mr. VERTREES. I am not saying that you did not, but I am just speaking of your position. I did not mean that you intended to look out for the Government, but that your status or situation there was as a protector of the Government's interest?

Mr. DAVIS. No. The function that is given the chief engineer in being arbiter in this matter is not as a protector of the Government's interests, I think, properly speaking. The contract is not made by the chief engineer; the contract is made by the Secretary of the Interior, and the contractor and the language of the contract is that in regard to certain matters in which dispute may come up, the chief engineer is the arbiter and his decision shall be binding on both parties. Now, that puts the chief engineer as an arbiter, and not in that capacity as a representative of the Government.

Mr. VERTREES. True, Mr. Davis, it does, and he is theoretically supposed to be impartial?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. But in point of fact, was not this the situation; not only were you, but the other engineers similarly situated, under like contracts, or rather government engineers, I should say, for you were paid by the Government, you were in the government service, and the Government looked to your decision for its protection?

Mr. DAVIS. So did the contractor.

Mr. VERTREES. I understand, but we will get to that presently. You say, "So did the contractor." You mean he looked to you, but he did not pay you, and you were not in his service?

Mr. DAVIS. That is true. The Government, however, is impartial.

Mr. VERTREES. I am not meaning to say, Mr. Davis, that you intended to press the matter.

Mr. DAVIS. I understand.

Mr. VERTREES. I am just getting at your situation.

Mr. DAVIS. I understand.

Mr. VERTREES. That was it, was it not, that the Government had no other officer to see that the contract was lived up to but you?

Mr. DAVIS. Oh, yes.

Mr. VERTREES. Who?

Mr. DAVIS. The whole Corps of Engineers; that is their business.

Mr. VERTREES. I mean the final decision as to whether it had been or not?

Mr. DAVIS. Well, yes; it had the Court of Claims.

Mr. VERTREES. That is when the other man is hurt? The Government never goes to the Court of Claims with a fellow about that sort of proposition?

Mr. DAVIS. I think not.

Mr. VERTREES. It is the other man that goes to the Court of Claims?

Mr. DAVIS. Well; the Government can go to the other court.

Mr. VERTREES. Of course it can, but I am on the way it works in your situation. I wish to say now that I am not meaning that you would intentionally do these people injustice.

Mr. DAVIS. I understand.

Mr. VERTREES. But on the situation there you were the final arbiter under the contract, and the Government expected you to see that the contract was properly lived up to?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And was paying you to see that that was done?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Those matters were discussed, were they not?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Then I will ask you now if Mr. Ballinger did not also bring to your attention the fact that he thought perhaps there was too much work being undertaken by the Government?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And discussed with you as to whether that was true or not?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. In point of fact, the Government has about expended something like \$50,000,000 on these reclamation projects, has it not?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And has something like thirty-odd of them under way now; I do not remember the exact number?

Mr. DAVIS. We call it 27. The division between projects is, of course, rather arbitrary, but we call it 27.

Mr. VERTREES. The divisions in some cases are rather arbitrary?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And according to your estimates it will take something like \$70,000,000 to finish them?

Mr. DAVIS. Yes, sir; finish them entirely.

Mr. VERTREES. So that there has been something like \$50,000,000 expended, and something like \$70,000,000 needed on the 27 projects that are under way?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And, of course, the projecting is just begun? I mean by that it is expected in the future that there will be a great many more?

Mr. DAVIS. In time.

Mr. VERTREES. Yes; in time.

Mr. DAVIS. But if I can help it there will not be any more until I finish those.

Mr. VERTREES. That is your judgment. So that those are matters that Mr. Ballinger discussed with you?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. He discussed also the question of those cooperative certificates, did he not?

Mr. DAVIS. I think so; he did at times. Whether it was that evening or not I do not know.

Mr. VERTREES. If he did not then, he did later?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. I will ask you if he did not also discuss with you the fact that these large withdrawals would surround the settlers by

lands that were unentered, and in that way would put them to great inconvenience and trouble?

Mr. DAVIS. Which large withdrawals do you refer to? I do not recall that he made——

Mr. VERTREES. Those blanket withdrawals for——

Mr. DAVIS. For power sites.

Mr. VERTREES. For power sites.

Mr. DAVIS. I do not think he said anything of that kind.

Mr. VERTREES. But you do recall the general situation—that these matters were discussed, and he discussed them with you from his standpoint, as of a man not well informed as to the situation?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And with you as a man that he believed to be well informed as to the situation?

Mr. DAVIS. I think so.

Mr. VERTREES. And you gave him your best judgment?

The CHAIRMAN. I wish you would give your answers a little louder, so that we can hear you.

Mr. VERTREES. And you gave him your best judgment on all those questions, did you not?

Mr. DAVIS. I did, briefly.

Mr. VERTREES. And as a result of that Mr. Ballinger further requested you to move your desk up so that he could have you near him to talk to?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. To advise with you and consult with you?

Mr. DAVIS. He did.

Mr. VERTREES. As to questions and the situation?

Mr. DAVIS. He did.

Mr. VERTREES. And really that was agreed upon, was it not?

Mr. DAVIS. It was.

Mr. VERTREES. But your superior officer, the Director of the Reclamation Service, Mr. Newell, I believe you stated, interposed some objection?

Mr. DAVIS. He did.

Mr. VERTREES. In other words, he thought he needed you, too.

Mr. DAVIS. Well, he did not put it on that ground.

Mr. VERTREES. Well, what was his objection?

Mr. DAVIS. The objection he advanced to Secretary Ballinger was that I could not be as useful in the Interior Department building as though my desk and office were in close touch with the reclamation files and the people of the Reclamation Service, who had detail information which I did not have.

Mr. VERTREES. He thought, then, that you would be more useful to the Government and the service near him than you would be near Mr. Ballinger, taking it as a whole?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. With the result, after the matter was discussed, that you were left where you were?

Mr. DAVIS. He delivered to me the instructions to move down to the department, detaching me from the supervision of the director; but the change in that decision was due to a subsequent interview between Mr. Ballinger and myself.

Mr. VERTREES. I do not care for the details; the point which I wish to get on and get before the committee is that, as the net result, you were not moved down.

Mr. DAVIS. Not as net result of that conference we were talking about when the director protested. That was not the reason for the change in plan at all.

Mr. VERTREES. What was the reason?

Mr. DAVIS. The reason was the objection on my part. I did not mean I was unwilling to at all, but I advanced certain reasons.

Mr. VERTREES. Which were accepted as better reasons?

Mr. DAVIS. I presume so. My contention was that it ought to be postponed for a couple of weeks, the reasons being, in the first place, that I had not been in touch with the office for about two months. I had spent about a month on my trip to Panama with President-elect Taft and the board and about another month on the trip to Porto Rico on irrigation work. And as things of importance happen very rapidly in the Reclamation Service I was not in touch with current events.

Mr. VERTREES. You wanted to catch up?

Mr. DAVIS. I wanted to catch up. I asked for a couple of weeks in which to do this, and he consented to it, and then never mentioned the matter again until the letter abrogating the arrangements.

Mr. VERTREES. Well, your relations with Secretary Ballinger were pleasant and friendly?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. He consulted with you often?

Mr. DAVIS. Frequently.

Mr. VERTREES. And showed that he appreciated, did he not, your judgment and experience as an engineer?

Mr. DAVIS. To a certain extent, yes; not very extensively.

Mr. VERTREES. On what point do you think he depreciated you; or do you mean to say that?

Mr. DAVIS. I do not mean that he depreciated me; he has always been friendly and expressed the utmost confidence in my friendship, and I certainly feel the same friendship for him. What I refer to is that, although doubtless sincere in these expressions of confidence, the respect and confidence does not extend to the point of, as a rule, approving my recommendations.

Mr. VERTREES. In other words, you think he assumed to exercise an independent judgment on that?

Mr. DAVIS. No; that is not what I mean at all.

Mr. VERTREES. What do you mean?

Mr. DAVIS. I do not question that at all.

Mr. VERTREES. What do you mean?

Mr. DAVIS. Simply that he does not give the weight to my recommendations that I would to a person in whom I had the confidence which he expresses in me.

Mr. VERTREES. I see.

Mr. DAVIS. I am not criticising him in any way about that.

Mr. VERTREES. I was going to get to that. I understood you to say before we adjourned—to volunteer the statement yourself, after

you had gotten through with your evidence in the original examination—this [quoting now]:

And I want to say further that in all that I have said, I do not mean from the first time I took the stand, to in any way reflect or insinuate that Secretary Ballinger had intentionally or consciously done a wrong act. I do not believe he has.

Did you not make that statement just before adjournment?

Mr. DAVIS. I presume that is a transcript of what I said.

Mr. VERTREES. You meant to say that?

Mr. DAVIS. Yes. I ought to explain that a little. I did not mean by that, if you will permit me, to approve of his act and what he said.

Mr. VERTREES. But I understand that. I understand that there are many things that you and he disagree on.

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And your viewpoint is different from his?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And his viewpoint is different from yours?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. You have already said that there are things that you recommended that he did not adopt?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. But I am now upon his intention and purpose. I understand you to accord to him that same uprightness of purpose that you claimed for yourself?

Mr. DAVIS. I simply disclaim any desire to question his motives on any point.

Mr. VERTREES. What do you mean by a desire to question—do you question them?

Mr. DAVIS. No, sir; I do not.

Mr. VERTREES. You spoke the truth when you said you did not mean by what you said "in any way to reflect or to insinuate that Secretary Ballinger had intentionally or consciously done a wrong act. I do not believe he has."

Mr. DAVIS. Yes, sir.

Mr. VERTREES. You stand for that, do you not?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And you wish this committee to understand you as speaking this way now, do you not?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Now we understand that. Did he at any time reflect upon your action or the action of the Reclamation Service, either publicly or privately, to your knowledge? I mean upon its efficiency and uprightness as a whole. I do not mean whether he criticised a particular thing. You, yourself, have probably done that often, but whether or not the service as a service was criticised or anything said different from what he said in his public utterances.

Mr. DAVIS. Oh, yes; very different.

Mr. VERTREES. What?

Mr. DAVIS. He never in any of his public utterances made criticisms similar to what he made in the Shoreham Hotel and later.

Mr. VERTREES. But I understood you to say that in the beginning he expressed these opinions, but as time wore on he became more familiar, and you thought he came to understand it better, and he became more friendly to the service?

Mr. DAVIS. Somewhat.

Mr. VERTREES. He never came to your views; I understand that.

Mr. DAVIS. No; he has never regarded the service as efficient and does not now regard it as efficient.

Mr. VERTREES. I did not mean now. I have not got to that point yet. I think he regards the service now as demoralized or disorganized, Mr. DAVIS; and you do, too. Didn't you say that a while ago?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. You agree with him about that?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Well, we will get to that presently, and as to its cause. I am on the point of the condition before the present conditions arose. I want to call your attention to the report of Mr. Ballinger as Secretary of the Interior for the fiscal year ending June 30, 1909, and I read from page 21 of that and ask you if you do not know that that was what he said to the Congress, or rather to the President, I should say [reading]:

Some of the most important elements of conservation of natural resources of the public domain lie within the purview of this statute—

That is, the statute under the Reclamation Service contract [again reading]—

the dormant power of stream and flood being conserved for the transformation of the desert in the vast tillable areas.

As the law fixes the responsibility for the success of these investments peculiarly upon the Secretary of the Interior, I have felt it incumbent upon me to visit during the last four months as many of the government undertakings as possible, and to determine upon the ground what, if any, changes in administration were demanded to secure the highest results, and also to learn the views and the needs of the settlers who are ultimately to pay for these works.

The Reclamation Service has been subjected to much unjust and to some just criticism. The work in the earlier stages of its existence being of a pioneer or experimental nature, room was left for the imagination of the unfair or uninformed critic. Generally speaking, the character of construction of dams, gates, drops, canals, etc., has been of a high type of modern practical utility. The precaution and pains exercised in giving extraordinary strength and durability to structures and to uniformity in canals and ditches has led some to claim that an unfair burden is thereby imposed upon the lands irrigated without a resultant benefit. Whatever merit there may be in this contention will doubtless not exist in the future work of the service.

The department has been unfortunate in the selection of some projects, considering water supply, soil, and climatic conditions, and in some instances projects having practically no public lands have been undertaken, which are within the domain of private enterprise rather than that of the Government.

I wish to assert my disapproval of irrigation projects undertaken by the Government where irrigation is to be accomplished by pumping with steam plants at high lifts, since the burden of operation and maintenance is usually too great for the average farmer. The time may come when such methods may be feasible.

Do you recall that?

Mr. DAVIS. That is in the Secretary's annual report, is it not?

Mr. VERTREES. Yes, sir.

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Well, his criticism there of the service, or rather his statements with reference to the Reclamation Service, are just, are they not?

Mr. DAVIS. I think not.

Mr. VERTREES. What is there wrong about them?

Mr. DAVIS. They are, especially in the last part—now, I will have to be excused for making some inferences—I think that is the only way that I can answer that question.

Mr. VERTREES. I just want to know if there is any part of that that you think was unfair to the service?

Mr. DAVIS. That last sentence about pumping projects I think is unfair.

Mr. VERTREES. That is the only one that you find fault with?

Mr. DAVIS. No, sir.

Mr. VERTREES. What else do you regard as unfair?

Mr. DAVIS. The criticism of taking the land, that is. Projects that were private lands, I think. Both of those things are caused by the law and not by the service. They are the fault of the law and not administration.

Mr. VERTREES. But without regard to that—perhaps you did not catch the full force of my question—he said he had been unfortunate in the selection of some projects considering whether they are caused by such climatic conditions as may be in existence.

Mr. DAVIS. That, I think, is unjust.

Mr. VERTREES. Do you think all the selections, so far as water supply is concerned, are good? What is the name of the place he described to you as filling badger holes?

Mr. DAVIS. That is what they called Turner reservoir.

Mr. VERTREES. That covers something like nine or ten thousand acres does it not?

Mr. DAVIS. I believe so; something like that.

Mr. VERTREES. I thought I understood you to say, Mr. Davis, that there were some subterranean defects or trouble in the soil?

Mr. DAVIS. There has been various seepage from that reservoir.

Mr. VERTREES. So it is defective, perhaps, in some way?

Mr. DAVIS. Well, I never saw one that was perfect.

Mr. VERTREES. Then, if there are none of them perfect, your criticism of Secretary Ballinger would not be just in saying that?

Mr. DAVIS. I am not criticising Mr. Ballinger. You asked my opinion of what he said.

Mr. VERTREES. Then I will put it this way, that your statement that his criticisms were unjust would hardly be well founded?

Mr. DAVIS. I think it is.

Senator SUTHERLAND. May I interrupt to ask a question or two. Do you think the Umatilla project is a feasible one?

Mr. DAVIS. I do.

Senator SUTHERLAND. That is the one in Oregon?

Mr. DAVIS. Yes, sir; I think that will show some of the best results of any of the projects.

Senator SUTHERLAND. I am told by people living there that it is not successful.

Mr. DAVIS. In what respect is it not successful?

Senator SUTHERLAND. Well, I am asking you.

Mr. DAVIS. I think it is.

Senator SUTHERLAND. The people down there say that the soil is in such a condition—it is so sandy that it is impossible to hold the soil down there.

Mr. DAVIS. If they would go and look, they would find it different.

Senator SUTHERLAND. That is a very sandy country, is it not?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. And the sand blows in great clouds, does it not, practically, all the time on windy days?

Mr. DAVIS. No; only on windy days.

Senator SUTHERLAND. You did not catch my question; I put that element in my question, Mr. Davis.

Mr. DAVIS. I thought you said practically all the time.

Senator SUTHERLAND. I said practically all the time when there was a wind.

Mr. DAVIS. I did not hear that. I beg your pardon. There have been some very fine results there. I think the finest results that have been obtained on any project are obtained on the Umatilla project, and that is a project that Secretary Ballinger has stated to me he considered a failure.

Senator SUTHERLAND. Considered a what?

Mr. DAVIS. Considered a failure.

Senator SUTHERLAND. The people down there seem to consider it a failure.

Mr. DAVIS. But they get \$300 an acre for the land down there, at least they are asking that for it.

Senator SUTHERLAND. You were present at the meeting held in Umatilla?

Mr. DAVIS. I was.

Senator SUTHERLAND. Did not a great many people complain very bitterly about the situation?

Mr. DAVIS. I did not understand that they did. They made no kicks at all at Umatilla.

Senator SUTHERLAND. Was the record of the meeting taken down?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. That will show, of course.

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. That will of course show whatever complaint was made?

Mr. DAVIS. I do not recall that there were any complaints, and there were a lot of statistics of wonderful results; you are quite right to say that it is difficult to reduce the land to cultivation, but that can be done.

Senator SUTHERLAND. The difficulty is in holding the soil down long enough to get anything to grow.

Mr. DAVIS. That is true.

Senator SUTHERLAND. Did not somebody undertake to control the people by telling them that they must remember that most of their future was before them?

Mr. DAVIS. Yes, sir.

Senator SUTHERLAND. What is land really worth there; you say they ask \$300 an acre?

Mr. DAVIS. I perhaps ought to correct that. I do not know whether they are asking \$300 an acre for any land, except, perhaps, right close to the town; but they are asking fancy prices; prices that I have heard of from \$100 to \$300 an acre.

Mr. McCALL. Are they getting those prices?

Mr. DAVIS. I do not think they are getting more than \$175 to \$200 an acre, but they are complaining that they can not sell the land.

Mr. JAMES. One hundred and seventy-five dollars to \$200 an acre for farming land?

Mr. DAVIS. It is fruit land. It is a fine fruit country; that is what they claim, and there are plenty demonstrations of that.

Mr. JAMES. I was going to say that we have some pretty good farming land in Kentucky, and just for the mere purposes of growing wheat, corn, or tobacco, \$100 an acre is a wonderfully good price.

Mr. GRAHAM. When you come to Illinois, you can get land at wholesale without irrigation for less than \$150 to \$200 an acre.

The CHAIRMAN. Your land in Kentucky is not of that flowing character.

Mr. JAMES. We are not as wet there as we used to be.

Mr. GRAHAM. You do not irrigate there as much as you used to.

Senator PURCELL. Their system of irrigation is different.

Mr. VERTREES. It is always easier to buy land at high prices than it is to sell at high prices.

Mr. DAVIS. If you have the money.

Mr. VERTREES. What do you say about the Deerflat proposition. Deerflat project?

Mr. DAVIS. The opinion regarding the Deerflat reservoir is an engineering opinion. I believe it is going to be all right, myself.

Mr. VERTREES. At present it is problematical, is it not?

Mr. DAVIS. It is, to a certain extent.

Mr. VERTREES. So that would come up unjustly under the statement, do you not think, that Mr. Ballinger gave to the President in reference to it when he said that some of them were of that——

Mr. DAVIS. When he said the selection was not fortunate.

Mr. VERTREES. Yes.

Mr. DAVIS. I do not so regard it. I do not question his opinion. but I do not think it is correct.

Mr. VERTREES. But at any rate you will admit this; you will admit that there was some ground for such opinion, and that the value of it is problematical as a future project.

Mr. DAVIS. Slightly so.

Mr. VERTREES. Slightly?

Mr. DAVIS. Yes.

Mr. VERTREES. What about the Hondo project, down in New Mexico? Have you ever got any water there at all to amount to anything?

Mr. DAVIS. Oh, yes; we distribute water from there.

Mr. VERTREES. Very little?

Mr. DAVIS. Very little.

Mr. VERTREES. It is a practical failure, and you so reported it—the Reclamation Service so reported it.

Mr. MADISON. What place is that?

Mr. VERTREES. It is called the Hondo project in New Mexico. (To Mr. Davis.) In other words, did not your service make this report about it:

¹ During the fiscal year a small check gate and turnout was built, and some investigations were made to determine the loss of water from the river channel above the reservoir.

Temporary water-rental contracts were entered into with individuals during 1906, and about 1,200 acres were served with an inadequate supply of water. No water has been available in 1909.

You think there is some slight question about the future value of that, do you not?

Mr. DAVIS. Slight, yes; not very much.

Mr. VERTREES. Not very much?

Mr. DAVIS. My opinion in regard to that reservoir is that it is one that should be used.

Mr. VERTREES. Who made that report, Mr. Davis?

Mr. DAVIS. That is the report of the director.

Mr. VERTREES. Mr. Newell. You do not agree with him on this?

Mr. DAVIS. I do. They are facts, not opinions.

Mr. VERTREES. I asked you for an opinion in reference to that.

Mr. DAVIS. Yes.

Mr. VERTREES. You say that those facts justify the opinion that that is a success?

Mr. DAVIS. I did not say that.

Mr. VERTREES. What did you say?

Mr. DAVIS. I said my opinion is that the Hondo reservoir is one that should be used, and if it had not been built would some day be built by somebody and wisely built. There were a phenomenal series of dry years there that never occurred before. That reservoir is big enough to hold nearly three seasons' supply when once filled. Nobody has suffered from the construction of that reservoir. It simply remains there with a thousand square miles of drainage area available to it; that, when full, will be sufficient for a three years' supply and they will—

Mr. VERTREES. Does not that report show that settlers are suffering?

Mr. DAVIS. No.

Mr. VERTREES. It does not?

Mr. DAVIS. No, sir; it does not.

Mr. PEPPER. You unintentionally, Mr. Vertrees, interrupted him in the middle of an answer.

Mr. DAVIS. There will be three years of supply, and if a phenomenal series of years like we are now having do recur in the future, the crops will not die because that is in a semiarid region, in which dry farming is going on all the time, and that is the reason those settlers are not suffering.

Mr. VERTREES. That is your answer to my question?

Mr. DAVIS. It is.

Mr. VERTREES. I have a letter from a gentleman which I have just received, Mr. Davis, I don't know; he says that he is a civil engineer, Mr. Hubert B. Page—

Mr. DAVIS. Yes, sir; I know him.

Mr. VERTREES. What are your relations with Mr. Page?

Mr. DAVIS. Mr. Page is a defaulting contractor who has complaints against the chief engineer.

Mr. VERTREES. Is that it?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. So Mr. Page is a bad man?

Mr. DAVIS. No, sir; I did not say that.

Mr. VERTREES. Well, Mr. Page, among other things, says this, Mr. Davis, and I ask you as to whether it is correct or not; he is speaking with reference to this difficulty that has been encountered, that the estimates of the cost of projects have been made, but experience has found that they are really costing a good deal more than the estimates that you people made in the outset promised.

Mr. DAVIS. What did you say about promised?

Mr. VERTREES. Than your estimates promised. I used the word promised in the sense of shown. In other words, you estimated the projects in the beginning, that they would cost such and such amounts——

Mr. DAVIS. There were certain opinions expressed, I presume, by engineers on most of the projects, regarding cost, which have since been exceeded by actual cost.

Mr. VERTREES. Now, the question that he is presenting here is that was not an exceptional thing, but so very common as to make a great deal of trouble, and result in causing the prices to be paid, or charges to be paid by settlers, much more than they had anticipated.

Mr. DAVIS. Yes, sir; that is true.

Mr. VERTREES. And that is the cause of a great deal of complaint.

Mr. DAVIS. That is true.

Mr. VERTREES. Now, those estimates were therefore erroneous estimates, were they not, tried by the standard of fact and truth?

Mr. DAVIS. I do not so consider them. Engineering estimates mean to anyone the probable cost of anything, based on available data.

Mr. VERTREES. The probable cost?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. That gives you leeway or a certain margin, but does not give an extraordinary margin.

Mr. DAVIS. It gives a margin to account for the changes in industrial conditions which have occurred in the last five or six years. The experience you speak of is by no means confined to the Reclamation Service. The president of the Northern Pacific Railroad asked me about it, and we exchanged data on it, and he told me, and told the Irrigation Committee, I think in Senator Flint's presence, certainly Senator Carter was there, that the experience of the Northern Pacific Railroad was that work carried out in the last four years cost on an average 60 per cent more than work carried out in the previous five years of the same character. The leading irrigation engineer——

Mr. VERTREES. I will have to stop you. That is not quite in answer to my question. Work started now, of course, in the last four years, as compared with another period of four years, might cost 60 per cent or some other per cent more. I am on the question of difference between estimates and cost.

Mr. DAVIS. Yes; estimates are always based on previous experiences, not on subsequent experiences.

Mr. VERTREES. Is not that just where the difficulty comes in?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. That the subsequent experience is so unfortunately different from the previous one?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Mr. Vertrees, are you not questioning him about the particular estimates referred to by Mr. Page?

Mr. VERTREES. Not yet; but I am coming to that.

Mr. MCCALL. Mr. Davis, are engineers' estimates of cost something like the estimates of architects as to the probable cost of a proposed building?

Mr. DAVIS. I am not experienced in architecture and I can not answer that question.

Mr. McCall. I want to ask you one more question. Do you not sometimes find the difficulties in the soil or rock formations make the cost greater than could reasonably be anticipated?

Mr. DAVIS. Very frequently.

Mr. McCall. I ask you that because I heard a railroad man say a short time ago, in one of the Southern States, that gumbo had cost them \$2,000,000. I supposed that that referred to the high cost of living, the soup of that manufacture; but I found on investigation it was a kind of treacherous soil that they encountered that they call gumbo. When dry, it is hard as a rock, and when it rains on it it becomes so soft it would bog a snipe, to use his expression.

Mr. DAVIS. A. J. Wiley, the leading irrigation engineer of the Northwest, stated to me within a week that in his experience a work under private and Carey Act irrigation enterprises had cost at least 75 per cent more than the prices that prevailed in 1903 and 1904, the years in which most of the reclamation projects were surveyed and estimated first. That is a greater percentage of excess than the Reclamation Service has experienced, I think, on the average.

Mr. GRAHAM. Mr. Davis, what part do the estimates play in the contract itself. Is the contractor in any way bound by the estimates?

Mr. DAVIS. Not at all. They are not given to the contractor. He has to make his own estimates.

Mr. VERTREES. Mr. Davis, we will now recur to the statement of Mr. Pace, that I wish to call your attention to.

Mr. DAVIS. Mr. Pace or Page?

Mr. VERTREES. Is it Page? I thought it was Pace. It is a part of his contention that the condition existed which we have just been discussing, and which I understood you to say does exist to a considerable degree. He gives this instance, which I will ask you to inform us if it is correct or not, and if not, how far it is wrong.

On February 1, 1906, bids were submitted by numerous contractors upon the construction of the Payette-Boise project, Idaho. Messrs. Conway and Willhite were the successful bidders on schedule 3, main canal from Indian Creek to Deer Flat Reservoir. The contract was granted and upon the basis of the engineers estimates amounted to a liability of \$95,400; owing to change of plans and erroneous classification in the original estimate, these contractors were paid a total of \$224,588.85.

Is that correct?

Mr. DAVIS. I do not know. There were large increases. I do not remember the figures. There were large increases in the total amount; but as the contractors were paid on a unit basis, so much a cubic yard, it was not an injustice to them.

Mr. VERTREES. I am not saying that they were cheated. I am just on the question of the estimates which are made on these projects, and which are undertaken, but he cites here one case of an estimate of \$95,400 based on your past experience, that you mentioned a while ago, but the future experience, which you also referred to, brought it up to \$224,588.

Mr. DAVIS. That was changes in quantities. He states that in the letter—quantities and classification.

Mr. VERTREES. Erroneous classification.

Mr. DAVIS. And quantities.

Mr. VERTREES. And change of plans.

Mr. DAVIS. Yes; which increased the quantities.

Mr. VERTREES. Were not the changes of plans and erroneous classification in the original estimates.

Mr. DAVIS. The change of plan was in completing the canal instead of building it partially, in which the contractors were paid on unit prices.

Mr. VERTREES. I am not sure that I clearly understood you in your original examination, Mr. Davis, touching the question of the monopoly of power sites. Would you just state again what you meant by saying that the true principle would be a monopoly—

Mr. DAVIS. The development of transmission of power on a large scale is a natural monopoly, and can not be anything else by natural conditions, and it should either be owned or controlled by the public in order to prevent oppressive exercise of that monopoly.

Mr. VERTREES. Did you not say something about they should be so connected with each other in transmission distances so as to support each other?

Mr. DAVIS. That is one of the reasons.

Mr. VERTREES. What is that system?

Mr. DAVIS. As long as the practical distance of transmission, which to-day is between 100 and 200 miles, depends on the power itself.

Mr. VERTREES. Is it your idea that water power within that radius should practically be under a single control?

Mr. DAVIS. Oh, yes; and really on much larger radiuses than that, because every plant can be more efficient the more it is connected, even though the extremities are far beyond the practicable transmission.

Mr. VERTREES. So your idea is that best results would be gotten by that sort of monopoly, or consolidation?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Consolidation of the power and interests?

Mr. DAVIS. This can be more cheaply developed, transmitted, and maintained, and with greater certainty, just like a transcontinental railroad is better than a half-dozen little roads under different management.

Mr. VERTREES. Then this theory of conservation that has been advanced is not so much, as far as water power is concerned, to prevent monopoly as it is to control monopoly in some way.

Mr. DAVIS. I am not speaking for the Conservation Commission; I am only giving my own ideas.

Mr. VERTREES. I may have gotten an erroneous idea, but I had gathered the idea that you yourself are decidedly a conservationist.

Mr. DAVIS. I am.

Mr. VERTREES. A sort of a thirty-third degree?

Mr. DAVIS. No; I never call myself that, but I am a conservationist, without any doubt.

Mr. VERTREES. I understood that.

Mr. DAVIS. Yes, sir; I do not—

Mr. VERTREES. And you have given a great deal of thought and study professionally to this question of water power?

Mr. DAVIS. Yes, sir; I have.

Mr. VERTREES. And upon the doctrines or principles which you are pleased to call "conservation" as applicable to water power?

Mr. DAVIS. Yes.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1893

February 17, 1909, no longer appears necessary to the interests of the United States.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

SALMON RIVER, IDAHO.

BOISE MERIDIAN.

- T. 24 N., R. 1 E., all secs. 1 to 3, 10 to 15, and 22 to 24, incl.
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- T. 24 N., R. 2 E., all of township lying south of Salmon River (unsurveyed).
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- T. 23 N., R. 3 E., all secs. 1 to 12, incl., lying south of Salmon River (unsurveyed).
- T. 24 N., R. 4 E., all of township lying south of Salmon River (unsurveyed).
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- T. 31 N., R. 3 W., all secs. 10 to 15 and 19 to 36, incl. (unsurveyed).
- T. 29 N., R. 4 W., all fractional township (unsurveyed) east of Snake River.
- T. 30 N., R. 4 W., all secs. 11 to 14, 23 to 26, incl., and 35 to 36 (unsurveyed).

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved March 30, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 7, 1909.

The honorable the SECRETARY OF THE INTERIOR.
(Through the Commissioner of the General Land Office.)

Sir: From recent investigations in connection with the Swan River, Montana, the withdrawal of the following-described lands, withdrawn under the supervisory au-

Mr. VERTREES. Could you give some idea, according to your conception now of the thing, in a reasonably populated State where these large areas are to be served, of the investment you think would be necessary properly to establish such a plant as you have described?

Mr. DAVIS. The investment?

Mr. VERTREES. Yes.

Mr. DAVIS. That would depend entirely on the amount of power you developed and the opportunities.

Mr. VERTREES. Surely.

Mr. DAVIS. It is perceptible almost of an infinite variety——

Mr. VERTREES. It would require very large amounts of money would it not, Mr. Davis?

Mr. DAVIS. It would.

Mr. VERTREES. And whoever took it by way of leasehold would have to get it for a sufficient length of time to insure, not only return on his investment, but as an income, as annual income—but the investment itself in the event he should not be so fortunate as to get it renewed at the end of the lease.

Mr. DAVIS. Not necessarily. Arrangements could be made such as are made repeatedly in short-time franchises in traction lines for the compensation for the plant at the end of the franchise. That can be very readily arranged by arbitrators or otherwise; it frequently is in waterworks and so on.

Mr. VERTREES. And if he did not get it, to pay for it on a certain basis, have some of the government engineers to appraise it for him?

Mr. DAVIS. Yes; or some arbitrators.

Mr. VERTREES. Now, in reference to these withdrawals. I want to get to these withdrawals, Mr. Davis, and ask you about them, what we call the blanket withdrawals. I understood you to say that if there was any erroneous action with reference to those blanket withdrawals, it was not to be ascribed to Secretary Garfield but to the Reclamation Service?

Mr. DAVIS. That is true.

Mr. VERTREES. If there was any?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. But I also understood you to say that there had been no subterfuges with respect to it in any way. Am I right about that?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Now, I wish you would explain to the committee what you mean precisely when you say that there were no subterfuges, because there were withdrawals made in terms of reclamation projects, were there not, which really were merely pure power sites?

Mr. DAVIS. Reclamation projects and power sites are not necessarily different things.

Mr. VERTREES. Not always, but frequently they are, are they not?

Mr. DAVIS. They may be.

Mr. VERTREES. Then, they are, necessarily, sometimes. Now, then, that is just the distinction I wanted to get, to see if I understood you. In your own mind you were drawing that distinction?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And, if I got you, it was this, and you will correct me if I am wrong about it, that power sites, pure and simple, could be used in connection with reclamation projects and as part of them,

d therefore were to be treated as power sites, by reason of the fact that from a power site you could transmit the electric energy for pumping and the like, and, as you stated here, it might be 150 miles in the reservoir or place of pumping. That would be possible?

Mr. DAVIS. Yes.

Mr. VERTREES. So, it was by connecting those two things together, is it, that sort of a power site with the reclamation project that you said there was no subterfuge. Is that right?

Mr. DAVIS. Yes. In connection with all of those power sites withdrawn, under the provisions of the reclamation act, there was another very important principle connecting those particular regions with the reclamation projects, as I stated to the committee; that they were confined to streams on which the Government already had appropriated the water; and these withdrawals made the control of that water somewhat more complete, and was therefore in the interests of that project.

Mr. VERTREES. In the interests of that project; but were there not withdrawals that were power sites pure and simple, that so far as you could see at the time they were made had no connection with any reclamation projects, but were believed to be very useful possibly in the future for commercial purposes as power sites?

Mr. DAVIS. No, sir.

Mr. VERTREES. Nothing of that sort?

Mr. DAVIS. No, sir.

Mr. VERTREES. Did you not have instructions and directions from Mr. Garfield to look out for all such and withdraw them?

Mr. DAVIS. I had instructions to look out for all power sites and withdraw them.

Mr. VERTREES. Did you hear Mr. Garfield's address at the conference of supervising engineers of the United States Reclamation Service at Mitchell, Nebr., in 1908?

Mr. DAVIS. I did.

Mr. VERTREES. I will ask you if, among other things, he did not say this at that conference of the supervising engineers:

The next is one of general importance—the question of power. I want still greater consideration given to the question of the development of power. In every one of the projects now on hand that has not received the attention of the engineer from the other side, I want that taken up as a new proposition, and also in any new project or extension. If any of you know of power possibilities in any of the present projects or the districts, I want those looked up right away and a report sent in, so that I can have as complete information as possible regarding the power possibilities of the country.

It is not only for the development of irrigation, but for commercial development, any use that the Government may see fit to make of this power. With the reservoirs, every time you hear of a possible reservoir site send some one to look at it and make a full report on it, and if it is at all feasible we will have it withdrawn. I want to keep every one of the power sites and reservoir sites in the hands of the Government, the end that if Congress takes the steps that I believe it will we will be able to make these for the communities at large, rather than to allow them to be acquired by private interests. I want the recommendations in such shape that I will have all the information before me to decide whether the Government will retain the site or whether I will allow an individual to acquire it.

Now, did you not proceed on those lines in recommending withdrawals?

Mr. DAVIS. Well, I suppose, generally; yes. It was not distinctly that instruction, however. It was talked over afterwards in detail.

Mr. VERTREES. Well, it was the same general purpose?

Mr. DAVIS. Yes; certainly.

Mr. VERTREES. And you acted in accordance with that direction?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. That is, to withdraw those power sites that were believed to be available for commercial development and commercial purposes as well as those that were supposed to be available as part of reclamation projects?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. That is true, is it not?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And that was done, was it not?

Mr. DAVIS. That was done. That is, not completely, but as far as we went it was done.

Mr. VERTREES. Largely done, a great many acres withdrawn that way?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Now, when you had the conferences with Mr. Ballinger which you have mentioned to the committee, touching the matter, I will ask you if it is not true that there was a conference the details of which you have omitted to mention, at which Assistant Attorney-General Lawler was present, called in to advise you and Mr. Ballinger as to the law of the matter? Is not that true?

Mr. DAVIS. It is; and I mentioned it in my direct testimony.

Mr. VERTREES. Most incidentally.

Mr. DAVIS. Well, I mentioned it.

Mr. VERTREES. You just did mention it, didn't you?

Mr. DAVIS. Yes.

Mr. VERTREES. There was such a conference?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. At the Secretary's office?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Now, Mr. Lawler there advised, and the Secretary concurred in it, did he not, that such withdrawals as were made in good faith for reclamation projects of those blanket withdrawals were valid and lawful. Did he not advise that?

Mr. DAVIS. Mr. Lawler, you are speaking of?

Mr. VERTREES. Yes.

Mr. DAVIS. Mr. Lawler's decision of the matter was that such withdrawals as were made for reclamation purposes were valid, and that those made for conservation of power were invalid.

Mr. VERTREES. The only difference between your statement and my question, as I understand it, I said "in good faith." I do not think that changes the question, though it emphasizes it; that such withdrawals as were made in good faith for reclamation projects, although they were in that broad form, were valid and legal; but where they were made in terms of reclamation projects but in reality to hold these power sites they were unlawful and not authorized.

Mr. DAVIS. Well, now, you have got the wrong meaning there. Power sites are not necessarily something separate from reclamation. A thing might be absolutely for no purpose except to save power sites and be a reclamation project; and we have lots of those withdrawals.

The CHAIRMAN. He has asked you what Mr. Lawler said about these things. You do not answer that question.

Mr. VERTREES. He drew a distinction such as I have drawn in the case he gave you and the Secretary there?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. What was his distinction, exactly stated? I will leave you to state it in the terms of Mr. Lawler.

Mr. DAVIS. His distinction was that if the purpose of withdrawal was the conservation of power alone it was illegal. If the purpose of withdrawal was for reclamation purposes it was legal.

Mr. VERTREES. Now, that was the advice given by Mr. Lawler then in your presence?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And Mr. Ballinger then said to you, did he not, now, I shall act on that and you proceed now to take the necessary steps with reference to that and report to me?"

Mr. DAVIS. He did not say that.

Mr. VERTREES. Well, what did he say?

Mr. DAVIS. We had some more discussion. I showed him that a great many of these power sites were available for reclamation purposes, and we discussed whether or not they should be returned to the public domain; and finally, as I recall it, we agreed upon this as the basis to govern what should be returned and what should not: Such power sites as were withdrawn as result of Secretary Garfield's instructions to withdraw power should be restored; those that had not been withdrawn prior or would have been withdrawn without those specific instructions were to be kept; the point being that there was no difference in the provision included in the scheme of withdrawal. That is, some looked way to the distant future and Secretary Ballinger would not to approve of that class.

Mr. VERTREES. If I understand you correctly, in your original examination, Mr. Davis, you said that many of these withdrawals were speculative and problematical; that it was a question of when they would be available, if ever, and to what extent they would be available, if ever?

Mr. DAVIS. That was to be developed by the subsequent examination that was proposed.

Mr. VERTREES. And their value as power sites in the future was problematical?

Mr. DAVIS. Yes, sir; that is, some of them, not all.

Mr. VERTREES. Of course. Many, I will say.

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And it was just on that broad assumption or position that the withdrawals had been made, as you understood?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And you so stated to Secretary Ballinger?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And thereupon in accordance with the advice of Mr. Lawler, and your statement as to that, did he not then instruct you to go ahead and report to him those that came within that classification?

Mr. DAVIS. His instructions to me were what I have stated. In the discussion it was finally agreed that the withdrawals that were being made so far in the future, that they had not been made at the instance of the Reclamation Service, but made in response to this order of Secretary Garfield, should be restored.

Mr. VERTREES. He did not know what they were, did he?

Mr. DAVIS. What individual ones? I presume not; no.

Mr. VERTREES. And he selected you to report them to him did he might know?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Was that not the extent of his directions as instructions to you, Mr. Davis?

Mr. DAVIS. We talked over the matter many times and had—

Mr. VERTREES. I am not talking about the talk you had. I was the net result of what he told you to do. And is not that it? Is not that what he told you to do?

Mr. DAVIS. He told me to send in for restoration the power sites that had been withdrawn at the instance of this recommendation of instruction.

Mr. VERTREES. To send for restorations the power sites that had been withdrawn in the manner and form stated?

Mr. DAVIS. That is right.

Mr. VERTREES. He gave you no instruction as to the manner and form in which you should send them in, did he?

Mr. DAVIS. No.

Mr. VERTREES. That was left to you entirely?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. To use your own phraseology and your own language.

Mr. DAVIS. I believe so.

Mr. VERTREES. Do you not know it?

Mr. DAVIS. I do not recall anything to the contrary.

Mr. VERTREES. Well, that is what I wanted to know. I understand that now. Now, in point of fact, you did go in accordance with the instructions he gave and made certain reports to him, did you not, in accordance with what had passed between you in the presence of Mr. Attorney-General Lawler?

Mr. DAVIS. Reports, did you say?

Mr. VERTREES. Well, recommendation.

Mr. DAVIS. We sent in a list for restoration, as he had instructed me to do.

Mr. VERTREES. And did you not say in those reports or recommendations or lists, whatever phraseology you prefer to use, that—

From recent investigations in connection with power sites, the withdrawal of the following-described lands withdrawn under the supervisory power of the Secretary February 17, 1909, no longer appeared necessary to the interests of the United States.

It is therefore respectfully recommended that so much of such departmental lands as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

As this withdrawal has been of so short duration and has probably come to general public notice, it is further recommended that the usual notice by publication hereinafter the time for settlement and entry be waived.

You sent in those reports, did you not?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And they were not on printed forms, were they?

Mr. DAVIS. Some were and some were not.

Mr. VERTREES. Well, I will ask you to look at this and see if they are not the originals.

Mr. DAVIS. Those that referred to the supervisory power are typewritten, as you see here and as I stated yesterday.

Mr. VERTREES. You did not say typewritten. You said printed, did you not?

Mr. DAVIS. No; when I said printed there I referred to those restored—reclamation withdrawals.

Mr. VERTREES. These are the originals you sent in.

Mr. DAVIS. That is my signature.

Mr. VERTREES. And these are the originals, are they not?

Mr. DAVIS. They are.

Mr. PEPPER. Mr. Vertrees, is there not a misapprehension there as between the original restorations of withdrawals made under the reclamation act and those made under the supervisory power?

Mr. VERTREES. These speak for themselves. I simply want them in the records.

Mr. DAVIS. Those are the restorations of the land withdrawn under the supervisory authority. The restorations of the land withdrawn under the reclamation act were made up on printed form and this was copied from the same form, with the change of a few words.

Mr. VERTREES. Had you not been advised that all that were made for reclamation projects in good faith were perfectly lawful; advised of that by Secretary Ballinger and Mr. Lawler both, and it was unnecessary to send in any such thing.

Mr. DAVIS. No, sir; I was instructed to send them in.

Mr. VERTREES. Had he not stated to you that his objections were to those that were unlawful, and have you not said that he put it solely on the ground that they were unlawful? Have you not repeated that over and over to this committee?

Mr. DAVIS. That is true, too.

Mr. VERTREES. And he wanted those he regarded unlawful to be defined as unlawful?

Mr. DAVIS. When we determined on where to draw the line as a result of that conference with Attorney-General Lawler, or Assistant Attorney-General Lawler, and in which he set down the rule that I have stated—or at least that rule was adopted as his instruction—that these broad withdrawals that had been made at the instance of Secretary Garfield should be restored.

Mr. VERTREES. I wish this, Mr. Chairman, to go into the record.

The CHAIRMAN. That will be admitted.

Mr. PEPPER. I have no objection to that, if it is understood they are only half of them; and the other half ought to go in with them, the other half of them relating to withdrawals under the reclamation act.

The CHAIRMAN. We have let in everything you put in this morning, so this will go in.

Mr. PEPPER. I am not objecting to this; I am merely asking in connection with this that the other half not included here, which is necessary to the completeness of what is now offered, should go in.

The CHAIRMAN. Are they here in the files or not?

Mr. PEPPER. Yes.

The CHAIRMAN. You will have full opportunities to offer them.

Mr. PEPPER. They have been called for and I would like to have them put into the record in connection with this.

Mr. CHAIRMAN. You can offer them if Mr. Vertrees does not.

Mr. MADISON. Are you now offering them in connection with this?

Mr. PEPPER. Yes, sir.

Mr. SMYTHE. We have not got them. We called for them but they were not—

Mr. MADISON. Where are they?

Mr. SMYTHE. We have called for them and have not got them.

Mr. VERTREES. I want to say in reference to that, that they were not produced, if it is meant by that that they were refused that that statement is not true, Mr. Chairman.

Mr. PEPPER. That was not intended, Mr. Chairman. We simply stated the fact that we did want to put them in here.

The CHAIRMAN. When he is through if he does not offer them you can call for them, and they will all be admitted.

Mr. PEPPER. I make the offer of the other half of the file when it shall be produced from the Department of the Interior. I would like to have it noted in the record at this time that I am calling for the other half of the file.

The CHAIRMAN. I understood you to say they were here with the clerk.

Mr. PEPPER. I find in there a certain number of reclamation restorations which bring the thing down to a point, but does not include the companion withdrawals to these. It is the companion withdrawals to these referred to in Mr. Davis's testimony that I want to have in the record.

The CHAIRMAN. Will you please examine the other one half, and if they are not here I will send for them.

Mr. PEPPER. We have examined up to the last lot that has been received, and the ones which I am now offering, upon production, are not yet in the hands of Mr. Sleman.

Mr. VERTREES. As I understand it, Mr. Chairman, he will have full opportunity to introduce any companion papers he wants to after a while. I am informed by Mr. Carr, the secretary to the Secretary of the Interior, that those documents he refers to have been sent here.

The CHAIRMAN. Very well, he can look them over, and if they are not here you will have an opportunity to put them in.

Mr. PEPPER. All I want is to have my offer noted at this time.

Senator FLINT. I just want to make this suggestion: Would it not be just as well to let Mr. Vertrees go along with his cross-examination, and then you can take it up on redirect and put in the records these documents or any other you desire?

Mr. PEPPER. I only thought it was well to stick a pin at this point to call attention to the fact that there is this other file that ought to be considered in connection with this.

Mr. McCALL. What paper? I have no doubt you put in a good many papers and that Mr. Vertrees will want to put in a good many, and it will be equally fair for you to put in yours when Mr. Vertrees concludes.

The CHAIRMAN. The papers that are offered are admitted in evidence?

(The letters referred to are as follows:)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., March 30, 1909.

The honorable the SECRETARY OF THE INTERIOR,
(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with power sites, the withdrawal of the following described lands, withdrawn under the supervisory power of the Secretary

February 17, 1909, no longer appears necessary to the interests of the United States.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

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SALMON RIVER, IDAHO.

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- T. 24 N., R. 4 E., all of township lying south of Salmon River (unsurveyed).
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- T. 31 N., R. 2 W., all secs. 7, 8, 9, 16 to 21 and 26 to 35, incl. (partly surveyed).
- T. 29 N., R. 3 W., all secs. 4 to 9 and 16 to 18, incl. (unsurveyed).
- T. 30 N., R. 3 W., all secs. 4 to 9, 16 to 21 and 28 to 33, incl. (unsurveyed).
- T. 31 N., R. 3 W., all secs. 10 to 15 and 19 to 36, incl. (unsurveyed).
- T. 29 N., R. 4 W., all fractional township (unsurveyed) east of Snake River.
- T. 30 N., R. 4 W., all secs. 11 to 14, 23 to 26, incl., and 35 to 36 (unsurveyed).

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved March 30, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 7, 1909.

be honorable the SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SUB: From recent investigations in connection with the Swan River, Montana, the withdrawal of the following-described lands, withdrawn under the supervisory au-

1894 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

thority of the Secretary of the Interior under date of February 16, 1909, no longer appears necessary to the interests of the United States.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

SWAN RIVER, MONTANA.

MONTANA PRINCIPAL MERIDIAN.

T. 26 N., R. 18 W., all secs. 6, 7, 18, 19, and 20.

T. 26 N., R. 19 W., all secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 23, and 24.

T. 27 N., R. 19 W., all secs. 15, 16, 21, 22, 23, 26, 27, 28, and 31 to 36, inclusive.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved April 7, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 7, 1909.

The honorable the SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Flathead River, Montana, the withdrawal of the following-described lands, withdrawn under the supervisory authority of the Secretary of the Interior under date of February 16, 1909, no longer appears necessary to the interests of the United States.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated, be restored to the public domain.

FLATHEAD RIVER, MONTANA.

MONTANA PRINCIPAL MERIDIAN.

T. 30 N., R. 19 W., all secs. 5 and 6 lying north of Flathead River.

T. 31 N., R. 19 W., all secs. 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32 lying west of Flathead River.

T. 26 N., R. 20 W., all secs. 1, 2, 3, 4, and 5.

T. 27 N., R. 20 W., all secs. 3, 4, 5, 9, 10, 11, 14, 15, 16, 21, 22, 23, 25, 26, 27, 28, 33, 34, 35, and 36.

T. 28 N., R. 20 W., all secs. 19 to 22 and 27 to 34, incl.

T. 29 N., R. 20 W., all secs. 6, 7, 18, 19, 30, and 31.

T. 30 N., R. 20 W., all secs. 1, 2, 3, 4, 9, 10, 11, 15 to 21, incl., 30, 31, and 32.

T. 31 N., R. 20 W., all secs. 12 and 13.

T. 28 N., R. 21 W., all secs. 1, 2, 3, 4, 9, 10, 11, 15, 16, 21 to 28, and 33 to 36, incl.

T. 29 N., R. 21 W., all secs. 1, 12, 13, 24, 25, and 36.

T. 30 N., R. 21 W., all secs. 13, 24, 25, and 36.

As this withdrawal has been of such short duration, and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved April 10, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 7, 1909.

The honorable the SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Missouri River, Montana, the withdrawal of the following described lands, withdrawn under the supervisory authority of the Secretary of the Interior, under date of February 16, 1909, no longer appears necessary to the interests of the United States.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

MISSOURI RIVER, MONTANA.

MONTANA PRINCIPAL MERIDIAN.

[Jefferson, Madison, Gallatin, and Beaverhead rivers.]

- T. 1 N., R. 1 E., all secs. 4, 5, 6, 7, 8, 9, 17, 18.
- T. 2 N., R. 1 E., all secs. 13, 14, 22 to 29, incl., 32, 33, 34.
- T. 3 S., R. 1 E., all secs. 2, 3, 4, 9, 10, 11, 15, 16, 21, 22, 27, 28, 33, 34.
- T. 4 S., R. 1 E., all secs. 4, 5, 8, and 9, not included within Madison National Forest, all secs. 17, 18, 19, 20, 30, and 31.
- T. 8 S., R. 1 E., all secs. 19, 30, and 31.
- T. 9 S., R. 1 E., all secs. 6, 7, 18, 19, 30, 31.
- T. 10 S., R. 1 E., all secs. 5, 6, 7, 8, 16, 17, 18, 20, 21, 27, 28, 29, 33, and 34.
- T. 1 N., R. 2 E., all secs. 4 to 9, 16 to 21, and 28 to 33, incl.
- T. 1 S., R. 2 E., all secs. 5, 8, 17, 20, 29, and 32.
- T. 2 S., R. 2 E., all secs. 5, 8, 17, 20, and 29.
- T. 2 N., R. 3 E., all secs. 25 to 36, incl.
- T. 1 N., R. 1 W., all secs. 19, 30, and 31.
- T. 4 S., R. 1 W., all secs. 25, 26, 35, and 36.
- T. 5 S., R. 1 W., all secs. 1, 2, 3, 10, 11, 12, 14, 15, 22, 23, 27, 28, 33, and 34.
- T. 6 S., R. 1 W., all secs. 3, 4, 8, 9, 10, 15, 16, 17, 20, 21, 22, 28 to 33, incl.
- T. 7 S., R. 1 W., all secs. 4 to 9, 16 to 21, 27 to 29, and 32 to 35, incl.
- T. 8 S., R. 1 W., all secs. 2, 3, 4, 9 to 15, incl., 22, 23, 24, 25, 26, 35, and 36.
- T. 1 N., R. 2 W., all secs. 6, 7, 8, 14 to 26, incl., and 35, and 36.
- T. 1 N., R. 3 W., all secs. 1 to 13, incl., 18 and 24.
- T. 2 N., R. 3 W., all secs. 31 to 36, incl.
- T. 1 N., R. 4 W., all secs. 1, 2, 9 to 17, incl., 20, 21, 28, 29, 32, and 33.
- T. 2 N., R. 4 W., all secs. 35 and 36.
- T. 1 S., R. 4 W., all secs. 5, 6, 7, 8, and 18.
- T. 14 S., R. 4 W., all secs. 1 to 12, incl.
- T. 1 S., R. 5 W., all secs. 1, 10 to 16, incl., 21, 22, 23, and 27 to 34, incl.
- T. 2 S., R. 5 W., all secs. 5, 6, 7, and 18.
- T. 14 S., R. 5 W., all secs. 1 to 12, incl.
- T. 1 S., R. 6 W., all sec. 36.
- T. 2 S., R. 6 W., all secs. 1, 2, 11, 12, 13, 14, 15, 22 to 27, and 33 to 36, incl.
- T. 3 S., R. 6 W., all secs. 2, 3, 4, 9, 10, 15, 16, 20, 21, 22, and 27 to 34, incl.
- T. 4 S., R. 6 W., all secs. 3, 4, 5, 6, 8, 9, 10, 13 to 17, 20 to 26, incl., 29, 30, 31, 32, 35, and 36.
- T. 5 S., R. 6 W., all sec. 6.
- T. 13 S., R. 6 W., all secs. 31, 32, and 33.
- T. 14 S., R. 6 W., all secs. 1 to 6 and 8 to 16, incl.
- T. 4 S., R. 7 W., all sec. 36.
- T. 5 S., R. 7 W., all secs. 1, 2, 10 to 15, 19 to 23, and 27 to 32, incl.
- T. 13 S., R. 7 W., all secs. 31 to 36, incl.
- T. 14 S., R. 7 W., all secs. 1 to 6, incl.
- T. 5 S., R. 8 W., all secs. 25 and 36.
- T. 6 S., R. 8 W., all secs. 1, 2, 10, 11, 12, 14, 15, 21, 22, 23, 27, 28, 32, 33, and 34.
- T. 7 S., R. 8 W., all secs. 4 to 9, incl., 17, 18, 19, and 30.
- T. 13 S., R. 8 W., all secs. 19 and 28 to 36, incl.
- T. 14 S., R. 8 W., all secs. 1, 2, 3, and 4.
- T. 7 S., R. 9 W., all secs. 13, 23 to 27, incl., 34, 35, and 36.
- T. 8 S., R. 9 W., all secs. 2, 3, 4, 8, 9, 10, 15 to 21, and 29 to 32, incl.

1896 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

T. 11 S., R. 9 W., all sec. 31.
T. 12 S., R. 9 W., all secs. 6, 7, 8, 16, 17, 18, 20, 21, 27, 28, 29, 33, and 34.
T. 13 S., R. 9 W., all secs. 3, 4, 9, 10, 11, 13, 14, 15, 16, 22 to 25, incl.
T. 8 S., R. 10 W., all secs. 24, 25, 26, 35, and 36.
T. 9 S., R. 10 W., all secs. 1, 2, 3, 9, 10, 11, 12, 14, 15, 16, 20, 21, 22, 27, 28, 29, 35 and 34.
T. 10 S., R. 10 W., all secs. 5, 6, 7, 8, 16, 17, 18, 20, 21, 22, 27, 28, 29, 33, and 34
T. 11 S., R. 10 W., all secs. 2, 3, 4, 9, 10, 11, 14, 15, 22, 23, 24, 25, 26, 35, and 36
T. 12 S., R. 10 W., all sec. 1.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved April 10, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary*

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 7, 1909.

The honorable the SECRETARY OF THE INTERIOR.
(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Missouri River, Montana, the withdrawal of the following-described lands, withdrawn under the supervisory authority of the Secretary of the Interior under date of January 18, 1909, no longer appears necessary to the interests of the United States.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

MISSOURI RIVER, MONTANA.

MONTANA PRINCIPAL MERIDIAN.

T. 6 N., R. 1 E., all sec. 1.
T. 7 N., R. 1 E., all secs. 1, 2, 11 to 14, 23 to 26, incl., 35 and 36.
T. 8 N., R. 1 E., all secs. 1, 2, 11 to 14, 23 to 26, incl., 35 and 36.
T. 9 N., R. 1 E., all secs. 4 to 10, incl., 13 to 17, incl., 22 to 27, incl., 35 and 36
T. 10 N., R. 1 E., all secs. 29 to 32, incl.
T. 18 N., R. 1 E., all secs. 2 to 5, 8, 9, 10, 15, to 20, incl., 29 and 30.
T. 19 N., R. 1 E., all secs. 13, 23 to 27 and 34 to 36, incl.
T. 2 N., R. 2 E., all secs. 3 to 10 and 15 to 36, incl.
T. 3 N., R. 2 E., all secs. 1, 2, 11 to 15, 22 to 27, incl., 34 and 35.
T. 4 N., R. 2 E., all secs. 1, 2, 11 to 14, 23 to 26, incl., 35 and 36.
T. 5 N., R. 2 E., all secs. 3, 4, 9, 10, 14, 15, 16, 22, 23, 24, 25, 26, 35 and 36.
T. 6 N., R. 2 E., all secs. 6, 7, 8, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 32, 33, and 34
T. 7 N., R. 2 E., all secs. 6, 7, 18, 19, 30, and 31.
T. 8 N., R. 2 E., all secs. 30 and 31.
T. 19 N., R. 2 E., all secs. 1 to 20, incl., and 29 to 31, incl.
T. 3 N., R. 3 E., all secs. 6, 7, 18, and 19.
T. 4 N., R. 3 E., all secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32 (partly unsurveyed).
T. 5 N., R. 3 E., all sec. 31 (unsurveyed).
T. 19 N., R. 3 E., all secs. 1 to 18, incl., and 21 to 24, incl.
T. 20 N., R. 3 E., all secs. 1 to 3, 10 to 15, 22 to 27, and 31 to 36, incl.
T. 19 N., R. 4 E., all secs. 6 and 7.
T. 20 N., R. 4 E., all sec. 31.
T. 10 N., R. 1 W., all secs. 2 to 6, 10, 11, 13, 14, 15, 22 to 27, and 34 to 36, incl
T. 11 N., R. 1 W., all secs. 30, 31, and 32.
T. 17 N., R. 1 W., all secs. 1, 2, 3, 8 to 12, incl., 16 to 21 and 29 to 31, incl.
T. 18 N., R. 1 W., all secs. 23, 24, 25, 26, 35, and 36.
T. 10 N., R. 2 W., all sec. 1.
T. 11 N., R. 2 W., all secs. 4, 5, 8 to 17, 23 to 26, incl., 35, and 36.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1897

T. 12 N., R. 2 W., all sec. 31, all secs. 19, 30, and 32 west of Missouri River (unsurveyed).

T. 13 N., R. 2 W., all secs. 6 and 7, and 19, 30, and 31 west of Missouri River (unsurveyed).

T. 16 N., R. 2 W., all secs. 1, 2, 3, 9, 10, 11, 14 to 22, incl., 28, 29, and 30 (partly unsurveyed).

T. 17 N., R. 2 W., all secs. 25 and 26, and 35 and 36.

T. 12 N., R. 3 W., all secs. 13 and 14 west of Missouri River, and all secs. 2, 3, 10, and 11.

T. 13 N., R. 3 W., all secs. 1, 2, 11, 12, 13, 14, 23, and 24, 25, 26, 35, and 36.

T. 14 N., R. 3 W., all secs. 3, 4, 5, 8, 9, 10, 11, 13, 14, 15, 16, 22, 23, 26, 27, 34, and 35.

T. 15 N., R. 3 W., all secs. 2, 3, 10, 11, 13 to 17, 20 to 22, incl., 27, 28, 29, 32, 33, and 34.

T. 16 N., R. 3 W., all secs. 22, 23, 24, 25, 26, 27, 34, 35, and 36.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved April 7, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 8, 1909.

The honorable the SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Owyhee River, Oregon, the withdrawal of the following-described lands, withdrawn under the supervisory authority of the Secretary of the Interior, under date of January 18, 1909, no longer appears necessary to the interests of the United States.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

OWYHEE RIVER, OREGON.

WILLAMETTE PRINCIPAL MERIDIAN.

T. 27 S., R. 41 E., all secs. 23, 24, 25, 26, 35, and 36.

T. 28 S., R. 41 E., all secs. 1, 2, 3, 10 to 17, 20 to 24, 27 to 29, and 32 to 34, incl.

T. 29 S., R. 41 E., all secs. 4, 5, 8, 9, 16, 17, 20, 21, and 28 to 33, incl.

T. 30 S., R. 41 E., all secs. 4, 5, 6, 7, 8, 9, 16 to 21, 28 to 33, incl.

T. 31 S., R. 41 E., all.

T. 27 S., R. 42 E., all secs. 19 to 36, incl.

T. 31 S., R. 42 E., all secs. 4 to 9, 16 to 21 and 28 to 33, incl.

T. 32 S., R. 42 E., all (unsurveyed).

T. 33 S., R. 42 E., all secs. 1, 2, 3, 10 to 15, incl. (unsurveyed).

T. 26 S., R. 43 E., all secs. 3, 4, 5, 8 to 17, 19 to 24, and 28 to 33, incl.

T. 27 S., R. 43 E., all secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32 (unsurveyed).

T. 32 S., R. 43 E., all secs. 29 to 32, incl. (unsurveyed).

T. 33 S., R. 43 E., all (unsurveyed).

T. 23 S., R. 44 E., all secs. 1, 2, 3, 10 to 15, 22 to 27, and 34 to 36, incl. (unsurveyed).

T. 24 S., R. 44 E., all (unsurveyed).

T. 25 S., R. 44 E., all secs. 2, 3, 4, 9, 10, 11, 14, 15, 16, 21, 22, 23, 26, 27, 28, 33, 34, and 35 (unsurveyed).

T. 26 S., R. 44 E., all secs. 3, 4, 9, 10, and 15 to 18, incl.

T. 33 S., R. 44 E., all secs. 19 to 36, incl. (unsurveyed).

T. 34 S., R. 44 E., all secs. 1 to 12, incl. (unsurveyed).

T. 21 S., R. 45 E., all secs. 1, 2, 3, 10 to 15, and 19 to 36, incl. (unsurveyed).

T. 22 S., R. 45 E., all (unsurveyed).

T. 23 S., R. 45 E., all secs. 4 to 9, 16 to 21, 28 to 33, incl. (unsurveyed).

T. 33 S., R. 45 E., all secs. 19, 20, 21, and 28 to 33, incl. (unsurveyed).

1898 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

T. 34 S., R. 45 E., all (unsurveyed).
T. 35 S., R. 45 E., all.
T. 20 S., R. 46 E., all secs. 25 to 36, incl.
T. 21 S., R. 46 E., all secs. 1 to 12, incl., and sec. 18.
T. 35 S., R. 46 E., all.
T. 20 S., R. 47 E., all secs. 30 and 31.
T. 21 S., R. 47 E., all secs. 6 and 7.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved April 10, 1909, and referred to the General Land Office for action recommended.

R. A. BALLINGER, *Secretary*

The CHAIRMAN. Proceed, Mr. Vertrees.

Mr. DAVIS. Can I explain my last answer, Mr. Vertrees?

Mr. VERTREES. Any explanation at any time that you desire to make is in order.

Mr. DAVIS. You asked me a while ago whether the details of these restorations were left entirely to me, and I may have answered that in the affirmative, but the subsequent statement should be taken in connection with that, which I now see is what you refer to, that the question as to whether these reclamation withdrawals were made in good faith may not, in Mr. Ballinger's mind, have been left to me. At that time he did give instructions that these withdrawals that I have described as made under the terms of the reclamation act on the instance of Mr. Garfield's instructions should be restored to entry, and they came back in obedience to those instructions, so that in effect he did not leave that detail to me.

Mr. VERTREES. Have you any knowledge of the letter of your chief, Mr. Newell, or, rather, the director, Mr. F. H. Newell—

The CHAIRMAN. A little louder, Mr. Vertrees, if you please.

Mr. VERTREES. Have you any knowledge of the letter written by the Director of the Reclamation Service to Senator La Follette dated July 10, 1909?

Mr. DAVIS. I have read it.

Mr. VERTREES. Was it submitted to you before it was sent?

Mr. DAVIS. It was not.

Mr. VERTREES. Where did you read it?

Mr. DAVIS. I read it in my office not very long ago. I have never seen it until this investigation came up.

Mr. VERTREES. Mr. Newell was present at one of these conversations with the Secretary, was he not, to which you have referred?

Mr. DAVIS. Yes, sir,

Mr. VERTREES. In this letter does he not use this language and make this statement?

In the conversation of March 19, I urged that the original plan be adhered to, namely, of gradually restoring lands which were not found to be useful for power sites. I pointed out that nine-tenths of the area covered by these segregations could be eliminated in a short time, and that a gradual restoration would attract less attention, and would not seem to reflect upon the previous administration.

Mr. DAVIS. I remember that.

Mr. VERTREES. You remember that in the letter. And do you not remember that as the recommendation or thing which Mr. Newell pointed out to the Secretary at that interview?

Mr. DAVIS. I do not remember what proportion he stated in that interview, but he stated a large proportion could be restored.

Mr. VERTREES. The particular point on which I wish you to speak is that a statement like this was made to the Secretary then by Mr. Newell in your presence.

Mr. DAVIS. Somewhat similar; yes, sir.

Mr. VERTREES. Well, you say somewhat similar. Do you not wish to be understood as saying that substantially and in substance he made this statement?

Mr. DAVIS. I think so.

Mr. VERTREES. Now, I understand you to say—

Mr. MADISON. Did he say anything in explanation of that statement at the time as to why he made it?

Mr. DAVIS. As to why he made the statement?

Mr. MADISON. Yes.

Mr. DAVIS. I do not think—I do not recall that he did. The idea he was conveying was that the withdrawal was a broad one, intended to cover the possibilities to be later pared down, as we have been speaking of, to eliminate such lands as proved to be not necessary in the development of power.

Mr. VERTREES. Is not the statement in the letter to Mr. La Follette, which in this letter Mr. Newell said he made in your presence to the Secretary, true, namely:

I pointed out—

that means in that conversation to the Secretary—

that nine-tenths of the area covered by these segregations could be eliminated in a short time.

Mr. DAVIS. I am perfectly willing to take Mr. Newell's statement of it.

Mr. VERTREES. You were there?

Mr. DAVIS. I was there and I have already told you I do not remember what proportion he spoke of then. I can not confirm that, but I do not doubt it; that is all.

Mr. VERTREES. You do recall, do you not, that he spoke on that subject and said some large proportion?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And do you not now believe, according to the best of your recollection, that that is the statement that he did make to the Secretary at that time?

Mr. DAVIS. I believe so. On Mr. Newell's statement I do not doubt it at all.

Mr. VERTREES. Does he not also say here in this letter that at that time he pointed out that a gradual restoration would attract less attention and would not seem to reflect upon the previous administration?

Mr. DAVIS. I should not wonder if he did. I do not recall that myself. I do not recall the remark, but I think Mr. Newell's statement is correct. I do not deny it.

Mr. MADISON. Do you remember anything that occurred that called out that statement? Do you know any reason for making it?

Mr. DAVIS. No.

Mr. MADISON. You do not remember?

Mr. DAVIS. No.

Mr. MADISON. It was a voluntary statement on the part of Mr. Newell?

Mr. DAVIS. I do not remember the statement. As I say, I do not doubt that he made it, but the details of the conversation are not all in my mind. I remember that the conversation was substantially as Mr. Newell stated, I think.

The CHAIRMAN. Let me see if I understand this, Mr. Vertrees. Is this a letter giving a statement as to a conversation that Mr. Newell and Mr. Davis—

Mr. VERTREES. And the Secretary had.

The CHAIRMAN. And the Secretary had. That is what this letter refers to?

Mr. VERTREES. Yes, sir.

Mr. MADISON. Is that letter in the records?

Mr. VERTREES. No, sir.

The CHAIRMAN. Do you offer that in evidence?

Mr. VERTREES. I will offer it in evidence. I offer the whole letter in evidence now. That is the only point I care to dwell upon.

The CHAIRMAN. It will be admitted.

Mr. VERTREES. But I will offer the whole to show that it is not qualified in any way.

The CHAIRMAN. I think the committee ought to have the whole of it.

(The letter referred to is as follows:)

[Copy.]

JULY 10, 1909

HON. ROBERT M. LA FOLLETTE,
United States Senate.

MY DEAR SENATOR: Replying to your inquiry regarding the restoration of water-power sites, I think, for your information, it only fair to set myself right against a charge of inconsistency. There has been some little feeling aroused, and as this has now quieted I think I may with propriety state that my position in the matter and that of Mr. Arthur P. Davis has been consistent throughout with the ideas of the friends of conservation.

During the summer of 1908 I was with the Secretary of the Interior, Hon. J. R. Garfield, visiting various reclamation projects. During the trip Mr. Garfield became impressed with the necessity of taking early action for preserving for the use of the people of the United States some of the more valuable water-power sites and of preventing these from being entered by speculative interests, who were apparently seeking to tie them up so that they could not be used, and thus could not be developed, in competition with the plants in existence. He discussed this matter thoroughly and gave orders that general investigations should be made and all available facts brought together.

As a result, Mr. Arthur P. Davis, chief engineer of the Reclamation Service (and during my absence from Washington, acting director), recommended the withdrawal of certain areas for the purpose of giving these field examinations. The recommendations for withdrawal, as a rule, were made by townships or large areas, because of the fact that the maps in many cases were known to be inaccurate. It was also known that little or no interference would result to the normal development of the country, as the available agricultural and mineral lands within the areas segregated had to a large extent already passed into private control. The temporary segregation applied mainly to those unentered tracts which were of little or no use except in connection with power development.

With the change of administration there seemed to be a misapprehension of the condition. One of the first acts of the new Secretary was to call into question the propriety or legality of the existing withdrawals, stating that western men had objected to the wholesale withdrawals, and that in his opinion the Secretary had no authority to make these.

This matter was quite fully discussed in the presence of Mr. Arthur P. Davis on March 18, and particularly on the afternoon of March 19. It was also discussed on March 12, and statement made that there was no authority of law for the so-called permissive authority of the Secretary. It was taken up again on March 15 and again March 18. On the latter date I had a talk with Senator Carter, in which the matter was again referred to.

On March 22 the subject was brought up by the Secretary, and on April 1, after conversation with the Secretary, draft of instructions, for signature by the Secretary, was prepared, ordering the Director of the Reclamation Service to recommend the restorations of the power sites.

In the conversation of March 19 I urged that the original plan be adhered to, namely, gradually restoring lands which were not found to be useful for power sites. I pointed out that nine-tenths of the area covered by these segregations could be eliminated in a short time, and that a gradual restoration would attract less attention and would not seem to reflect upon the previous administration.

On April 4 I left Washington, and Mr. Davis tells me that he was ordered by telephone to at once send down the lists concerning which we had had conversation. On April 7 he sent down many of the lists, utilizing the printed forms prepared for recommending restorations. He followed this by a letter of April 10, outlining the substance of previous correspondence to the effect that the lands had been withdrawn in accordance with a policy adopted by President Roosevelt.

In short, I think I can properly assure you that the Reclamation Service is not open to a charge of inconsistency. It has endeavored to follow the instructions and recommend withdrawals of land or restoration in accordance with the orders of the then Secretary. Personally, Mr. Davis and I are completely agreed that the most practical way of handling this work is to make preliminary withdrawals general in extent, and then, as soon as possible, cut these down on a basis of a careful study of the data or of a field examination.

Very truly, yours,

F. H. NEWELL, *Director*.

Mr. JAMES. I thought I understood you to say yesterday, in your direct examination, that Secretary Ballinger directed the withdrawal of these lands in a slow manner so as not to attract public attention.

Mr. DAVIS. No; the restoration—

Mr. JAMES. Or the restoration?

Mr. DAVIS. Yes, sir.

Mr. JAMES. Is that true that he did that?

Mr. DAVIS. That is my recollection; yes.

Mr. JAMES. So it was not the withdrawal. It was the restoration that you were speaking of.

Mr. DAVIS. Yes, sir.

Mr. JAMES. And now you are speaking of the withdrawal.

Mr. DAVIS. Mr. Newell is also speaking of restorations; but not restorations of the blanket-order withdrawal, but of the portions that might be found by investigation not necessary for power sites.

Mr. JAMES. Did Secretary Ballinger give any explanation of his direction that this should be done slowly?

Mr. DAVIS. No, sir; nor did it strike me as a matter of any importance. I did not attach the meaning to that that Secretary Garland seemed to.

Mr. JAMES. Well, if this was perfectly legal and right, and all that, what was the necessity of any slowness of action? Why not do it at once?

Mr. DAVIS. I do not see any necessity of slowness of action, but it would be more convenient to do it slowly, because work has to be done.

Mr. JAMES. That would have been the natural conduct of affairs.

Mr. DAVIS. Yes, sir.

Mr. JAMES. But if I understood you, he directed it should be done slowly. Of course he knew the natural procedure that would be taken.

Mr. DAVIS. Yes. His words on that might have been suggestive rather than directive, perhaps. I did not understand him to place any great emphasis on that.

Mr. JAMES. Well, was not this true that the reason he made that suggestion was that he feared that public criticism might be made in restoring these lands to public entry which Mr. Garfield had withdrawn?

Mr. DAVIS. I did not so interpret it. I did not interpret it at all. In fact, it made very little impression on me. I happened to remember that remark, that is all.

Mr. VERTREES. Why did you state it here yesterday?

Mr. DAVIS. Why did I state it here yesterday?

Mr. VERTREES. Yes.

Mr. DAVIS. Because the attorney asked me.

Mr. VERTREES. How came the attorney to ask you? Had you told him about it and told him to ask you?

Mr. DAVIS. Yes, sir—no, sir; I did not tell him to ask me; I had told Mr. Garfield about it, and—

Mr. VERTREES. And that reminds me in this connection to ask you a question—

Mr. PEPPER. Let him finish, Mr. Vertrees.

Mr. VERTREES. Oh, sure.

Mr. DAVIS. The matter had come to my notice in connection with—in fact I had noticed it the day before in connection with Mr. Garfield's letter to the President, that he mentioned that point, and I had told Secretary Garfield—I do not know whether I ever told the attorneys that or not, but he asked me and so I answered the question.

Mr. VERTREES. Now, in point of fact, was it not done just the reverse of that way; not carried out slowly and gradually at all, but very promptly and vigorously in the course of a few days?

Mr. DAVIS. I think perhaps it might be called a compromise between the two. It was not done suddenly, and it was not done very gradually.

Mr. VERTREES. Well, how many days covered it? Was it all done in ten days, the whole restoration?

Mr. DAVIS. No; I think not.

Mr. VERTREES. Look on page 86 and see how long it was and how many acres were restored.

Mr. DAVIS. Eighteen days.

Mr. VERTREES. In other words, were these not restored between March 3 and April 10?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And how many acres?

Mr. DAVIS. According to this I believe about 3,000,000 acres or a little over.

Mr. VERTREES. Three million acres were restored within fifteen days or sixteen days.

Mr. DAVIS. Eighteen days.

Mr. VERTREES. Now, Mr. Davis—

Mr. MADISON. Just before you leave that I want to ask you this question. Perhaps you testified about the matter when I was not here. I merely want to ask the one question, because I do not want to travel over ground that has been traveled over in my absence. What, if anything, was said by the Secretary with regard to withdrawing these matters slowly so as not to attract public attention?

Mr. DAVIS. That is all he said about it that I recall.

Mr. MADISON. Well, was that said?

Mr. DAVIS. That is my recollection; yes. I do not remember it being said but once, or any particular stress laid upon it, and as it was not mentioned in subsequent interviews I rather disregarded it, because he renewed his instructions from time to time and he did not lay any stress upon that point.

Mr. VERTREES. Does not Mr. Newell's letter, which you say you read and which purports to state what happened at that interview, state that it was Mr. Newell's suggestion that it be done that way, instead of the Secretary's?

Mr. DAVIS. No; he did not suggest that it be done at all. He suggested a very different process.

Mr. VERTREES. What does the letter say on that point?

Mr. DAVIS. It says to restore this part not needed after investigation. The investigation could not come suddenly.

Mr. VERTREES. I am on the point of the statement that it be done slowly so as not to attract attention and reflect upon the previous administration.

Mr. DAVIS. But the understanding of it is different in the two cases; one means one thing and the other another.

Mr. VERTREES. What is the difference?

Mr. DAVIS. One is to have restored the whole blanket withdrawal and the other to make examination and restore the part not needed.

Mr. VERTREES. Do you not know that it applies to the restoration, whatever it might be?

Mr. DAVIS. Yes; but different things were to be restored.

Mr. VERTREES. That is to say, the restoration of those lands which Mr. Garfield had withdrawn; that is what he was talking about. Do you not know that is so?

Mr. DAVIS. No, sir.

Mr. VERTREES. What restoration was it, then, that you discussed?

Mr. DAVIS. The restoration of the lands which investigation would show were not needed. The others were lands that were needed.

Mr. VERTREES. The question you had up was the restoration of the lands withdrawn by Mr. Garfield, that the Secretary and his counsel thought had been withdrawn illegally.

Mr. DAVIS. In the one case it was the whole thing and in the other case the nonessential part.

Mr. VERTREES. Was he not advised by his counsel, and accepted that advice, that these withdrawals that had been made in good faith for reclamation purposes could not be disturbed and were legal?

Mr. DAVIS. No, sir.

Mr. VERTREES. You say that now, do you?

Mr. DAVIS. I do, and I said it before.

Mr. VERTREES. You say you said it before?

Mr. DAVIS. He said they were legal, but he did not say they were to be disturbed.

Mr. VERTREES. Did he assume at any time that he was going to disturb any legal withdrawals?

Mr. DAVIS. I do not know what he assumed. I am only testifying as to his instructions.

Mr. VERTREES. I mean by his assumption any instruction or direction or hint of that by his lawyer or him to you at any time. Do you not know that no such thing ever happened?

Mr. DAVIS. No, sir; I do not.

Mr. VERTREES. Do you say it did?

Mr. DAVIS. I say this: He ordered the restoration of certain lands which on my interpretation of their being good-faith reclamation withdrawals were legal, according to his Attorney-General. But he may have interpreted the words "good faith" in a different way and I think he did; and that is the reason he ordered them restored.

Mr. VERTREES. You have said that on the 10th of June you advised him that it was inadvisable and calculated to disorganize the work to restore Mr. Newell, I believe?

Mr. DAVIS. Yes, sir; in my judgment.

Mr. VERTREES. In your judgment, of course; you would not state it as a fact; but, as information, he indicated to you his purpose to remove Mr. Newell?

Mr. DAVIS. He did.

Mr. VERTREES. He talked to you as the chief engineer on the subject?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. To you more than once on that subject?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Did he explain to you why he thought it was inadvisable and desirable?

Mr. DAVIS. Simply that he did not have confidence in Mr. Newell's ability, but he did not specify anything further.

Mr. VERTREES. That was the ground on which he put it to you was it?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. He put it on that ground?

Mr. DAVIS. He did.

Mr. VERTREES. After June the 10th did not the Secretary make a trip to the West where these projects were under way—27, I believe you call them—were mostly located, and for the purpose of visiting them and for the purpose of acquainting himself with their condition?

Mr. DAVIS. I presume that was his purpose.

Mr. VERTREES. You accompanied him, did you not?

Mr. DAVIS. I was on part of the trip, not all of it.

Mr. VERTREES. How many did you go in company with, Mr. DAVIS?

Mr. DAVIS. I do not know; it would take some little time to count them up. There were several.

Mr. VERTREES. But he continued his investigation after he parted with you?

Mr. DAVIS. Yes.

Mr. VERTREES. When did you part with him on that journey?

Mr. DAVIS. Well, we were all together at several different times. The first time I went first to the North Platte project and he met me

and we went over that. We traveled from there to some other place, I do not remember where.

Mr. VERTREES. To get the point in your mind, you met him at Seattle, shortly after the 2d of August?

Mr. DAVIS. I do not remember the date; yes, sir, I think so. I met there first before that.

Mr. VERTREES. I am asking you with reference to a certain letter he wrote to the President. Did he not at Seattle show a copy of that letter that was written to the President from Portland, dated August 2, 1909—he read it to you, did he not?

Mr. DAVIS. He read me a letter in Seattle that he had written. I do not know whether he wrote it in Portland or in Seattle.

Mr. DAVIS. It was a letter dated Portland Oreg., August 2, 1909?

Mr. DAVIS. Yes, sir; I do not remember the date.

Mr. VERTREES. He did read you a certain letter, did he not?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. At Seattle?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Now, look at this copy and see if you recognize it as a copy of the letter?

Mr. DAVIS (after examining letter). That looks like it.

Mr. VERTREES. I presented it to you for the purpose of asking you whether or not this is true, that you read it, approved of it, approved the suggestions therein made, and made not the slightest objection to any of them?

Mr. DAVIS. Secretary Ballinger never asked me to approve his correspondence. He did not ask me to approve that, nor did I approve it.

Mr. VERTREES. Did you express any opinion to him when he showed you this letter against any of the things therein stated and contained?

Mr. DAVIS. No, sir; I do not recall doing so. I do not think I did.

Mr. VERTREES. Did he not read it to you and show it to you for the purpose of obtaining your views with respect to the matters therein stated?

Mr. DAVIS. I do not think he did.

Mr. VERTREES. What did you think he showed it to you for?

Mr. DAVIS. To inform me what he was doing.

Mr. VERTREES. At any rate, he did show it to you?

Mr. DAVIS. He did; that, is he read it to me. He did not show it to me.

Mr. VERTREES. Among other things does it not relate to the conditions out there and also to the proposed issue of bonds in order to complete these reclamation projects?

Mr. DAVIS. I do not recall that. Perhaps it does. I did not see that.

Mr. VERTREES. Was it not shown to you for the very purpose of obtaining your views on this very subject?

Mr. DAVIS. On the subject of the bond?

Mr. VERTREES. Yes.

Mr. DAVIS. Oh, no, sir.

Mr. VERTREES. Did you then express, when he did read it to you, any opposition to that system of meeting the present situation?

Mr. DAVIS. No, sir; I never have expressed any opposition.

Mr. DAVIS. I certainly do. I favored it before the Committee on Ways and Means, and you can read the reasons which I gave, which are numerous.

Mr. VERTREES. I understand it now. I desire to read this letter to the President, written by the Secretary, dated Portland, Oreg., August 2, 1909, and which was read to Mr. Davis, as he has stated, before it had been sent.

The CHAIRMAN. You may read it.

Mr. VERTREES. It is as follows:

PORTLAND, OREG., August 2, 1909.

MY DEAR MR. PRESIDENT: I have just completed a conference in reference to the apportionment of the *reclamation fund* for the coming year with the director, Chief Engineer Davis, and the seven supervising engineers of the Reclamation Service in this city and have also, since leaving Washington, spent most of my time in visiting and studying the following government reclamation projects: The North Platte, in Nebraska; the Shoshone, in Wyoming; the Huntley, in Montana; the Umatilla, in Oregon; the Payette-Boise and Minidoka, in Idaho, to all of which except one I was accompanied by Chief Engineer Davis and the supervising engineer of the several divisions.

I am very much exercised over the conditions which I find, particularly in regard to the lack of funds necessary to complete the projects under way and bring about an adjustment of expenditures within the several reclamation States, as contemplated by the reclamation act. It is estimated by the supervising engineers that there is needed for the coming year on the various government projects approximately \$26,000,000 and there is available only \$11,000,000. This \$11,000,000 was tentatively apportioned at the conference in Portland to take care of the most pressing needs of the service and does not take into consideration the provisions of the ninth section of the act of June 17, 1902, which declare it to be the "duty of the Secretary of the Interior in carrying out the provisions of this act, so far as the same may be practicable and subject to the existence of feasible irrigation projects, to spend the major portion of the summing within each State and Territory, etc."

No feasible project in the full sense has been presented in Oklahoma; hence no funds have been spent in that State except for preliminary investigation. Several of the States and Territories have had spent within them a large excess of funds, notably Nevada, Nebraska, Arizona, Idaho, and Utah. Oregon and California have had their full quota by a large percentage, and the time limit provided for by the act for such adjustment will accrue in 1912. Oregon presents certain feasible projects in addition to those under way, for which the reclamation fund, if distributed as recommended by the engineers, would not permit of construction. There are at least two feasible projects presented in Oregon, and I understand additional feasible projects are possible in California which could be taken up were funds available. In Oregon one is the Malheur; another is the proposed extension of the Umatilla project. I apprehend, if nothing is done by the Government with the Malheur project, that great dissatisfaction will exist among the settlers in the Malheur Valley and that the delegation in Congress from Oregon will be likewise disappointed. On my way to the projects in Idaho I visited the Malheur country and talked with the people, pointing to them the difficulties confronting the Government in the way of funds. Notwithstanding this, they were unanimous in their desire that some effort should be made by the Government in their behalf. I have been appealed to by all of the delegation in Congress to favorably consider the taking up of this project, they in turn, of course, being importuned by the settlers and landowners in this behalf.

In view of the fact that the Government has undertaken a greater number of projects than it can complete with reasonable businesslike dispatch with the funds at its disposal, I am inclined to believe that it is an unwise policy to undertake any new projects until those under construction are completed and the fund replenished by repayment from constructed portions and the sale of public lands sufficient to authorize them to be taken up and completed in a businesslike manner, as contemplated by the act. I am disappointed to find in a number of the projects nearly completed that the advancement of agricultural development has proceeded so slowly and many of the settlers are so impecunious that they will, in many instances, be unable to meet their installments as they fall due. Had the settlers been prohibited from entering upon the projects prior to water being available to irrigate their lands these conditions would have been practically avoided.

I am impressed with the belief that some of the projects have been entered into without due consideration as to their feasibility, taking into consideration climatic conditions, soil, the cost of construction, maintenance, and operation. I have no doubt that political pressure has had something to do with these conditions. I mention it not by way of criticism but to advise you of the situation, as, for example, the Williston project in North Dakota is a pumping project, power generated by steam for which coal is mined on adjacent lands; the irrigable area is small and the cost of maintenance is extremely high; the settlers in favorable seasons take practically no water and in others clamor for water beyond the capacity of the plant.

In the Umatilla and a portion of the Minidoka projects the shifting sands with high winds make it difficult for the settlers for the first few years to raise crops of any kind and the ditches and laterals are expensive to maintain because of being filled with drifting sand. I was met at several of these projects by settlers without means and without crops urgently insisting upon an extension of time for the payment of their installments, a condition which will require serious and careful consideration. On most of the projects the maintenance charges, on account of the ditches and canals being new, are greater than they will be after irrigation has been carried on for several years. The fixed charges, such as salaries, etc., are also burdensome because of the lack of funds to promptly complete the projects. Notwithstanding these adverse conditions, I do not wish you to infer that I am not keenly alive to the advantages secured by the moneys expended by the Government in these projects, as I think, in course of time, they can, with few exceptions, be worked out as highly advantageous as a means of producing valuable agricultural settlements where otherwise the land would be practically valueless, and, furthermore, the Government construction has been of a type illustrative of the best system for irrigation, and I wish here to commend the engineers and employees of the service in the field as a highly efficient and well-organized force. I am not ready, however, to say that improvements could not be made in the service in the line of more businesslike methods and a saving of expense.

In view of the conditions found by me, so far as I have visited the projects, I am of the opinion that an effort should be made to secure sufficient additional funds within the next year to complete the projects now under construction. My present view is that this may be done by securing authority from Congress to issue bonds against the reclamation fund, which accumulates from the sale of public lands and from the payment of installments for the cost of construction. If the Government could thus provide an additional fund of \$10,000,000, I think it would be ample to take care of all requirements until the regular fund accumulated sufficient to pay off the bonds and take up new projects. In the meantime, as fast as construction is completed, the expenses should be reduced accordingly. I do not believe that political consideration should in any respect control the investment of this fund, nor do I think the Government should undertake any new work until it has readjusted present conditions and gotten them on a thorough business basis. I am encouraging the letting of contracts for small parcels of work where it can be done by settlers and heavy machinery is unnecessary. With the view of assisting settlers in meeting their payments and in performing their obligations in cultivating and proving up on their lands, I am modifying the regulations so far as the law will permit to relieve the embarrassment to those on the various projects.

I would like an expression from you as to whether or not you concur with my views as above explained and would be pleased to have any suggestions or advice which you feel should be considered in connection with any of these matters. I realize the difficulty of placing before you by letter the conditions as fully as they could be explained were it possible for me to discuss them with you. It would relieve me very much to have you give this your early attention and to have your views as above suggested. I will withhold my approval of the estimates for future work or the undertaking of extensions until I hear from you. I am returning to Seattle to-night.

Sincerely, yours,

(Signed) R. A. BALLINGER.

Hon. WM. H. TAFT,
The White House, Washington, D. C.

The CHAIRMAN. That letter is admitted.

Mr. VERTREES. I also wish to read the reply of the President, although that was not shown to Mr. Davis, but I deem it due to Mr. Ballinger that it should be here presented.

The CHAIRMAN. Do you want to read it?

Mr. VERTREES. Yes, sir; it is very short. It is as follows:

[The White House, Washington.]

BEVERLY, MASS., August 10, 1909.

MY DEAR MR. SECRETARY: It is very difficult for me to express an opinion on the situation which you describe in your letter. I am not very much surprised, because the enthusiasm with which this Reclamation Service was entered upon was almost certain to lead into enterprises which were in advance of the possibility of profitable returns. All I can say to you is that you must put the brakes down until Congress shall meet, and then we will present the situation to Congress exactly as it is and make such recommendations as you believe ought to be made in regard to it. We must be very accurate in our statements as to the conditions that exist, because our motives may be misconstrued, as they have already been, and we shall encounter bitter criticism and judgment from those who are left in an embarrassed condition.

I hope that you will join me at Seattle in September, or at some earlier point in my itinerary, and that we can talk this matter out then. Meantime you will have been to the Spokane convention, and I think it might be well for you to make the clear statement of fact in respect to the matter which you have made to me.

Sincerely, yours,

WM. H. TAFT.

Hon. R. A. BALLINGER,
Secretary of the Interior.

The CHAIRMAN. That letter is also admitted.

Mr. VERTREES. That brings to my mind something that I think ought to be brought out in this connection, Mr. Davis, and that is that the reclamation act of June 17, 1902, did not permit of the exclusion of entries under the homestead laws, did it, on those lands——

Mr. DAVIS. That were to be irrigated?

Mr. VERTREES. Yes.

Mr. DAVIS. Yes, sir; I think it did.

Mr. VERTREES. Suppose I read you section 3.

Mr. DAVIS. I am familiar with it, but that has been differently held by different Secretaries, and my opinion is that it did.

Mr. VERTREES. I would like to put it in the record.

The CHAIRMAN. You may read it, and it will be admitted.

Mr. VERTREES. The section is as follows:

SEC. 3. That the Secretary of the Interior shall, before giving the public notice provided for in section four of this act, withdraw from public entry the lands required for any irrigation works contemplated under the provisions of this act and shall restore to public entry any of the lands so withdrawn when, in his judgment, such lands are not required for the purposes of this act; and the Secretary of the Interior is hereby authorized, at or immediately prior to the time of beginning the surveys for any contemplated irrigation works, to withdraw from entry, except under the homestead laws, any public lands believed to be susceptible of irrigation from said works: *Provided*, That all lands entered and entries made under the homestead laws within areas so withdrawn during such withdrawal shall be subject to all the provisions, limitations, charges, terms, and conditions of this act; that said surveys shall be prosecuted diligently to completion, and upon the completion thereof, and of the necessary maps, plans, and estimates of cost, the Secretary of the Interior shall determine whether or not said project is practical and advisable and if determined to be impracticable or unadvisable he shall thereupon restore said lands to entry; that public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry only under the provisions of the homestead laws in tracts of not less than forty nor more than one hundred and sixty acres, and shall be subject to the limitations, charges, terms, and conditions herein provided: *Provided*, That the commutation provisions of the homestead laws shall not apply to entries made under this act.

You refer to that?

Mr. DAVIS. I do.

Mr. VERTREES. Now, I will ask you, calling your attention sharply to this order of October 25, 1902, whether or not it is not true that this

warning that is given to the settlers is simply a warning that they must keep away until the surveys and the irrigation investigations have been completed, and has no relation at all to the completion of the works?

Mr. DAVIS. That is correct. The warning, however, has not all been read. It is, however, couched in very emphatic terms—warning the people that they come at their own risk. The committee will see the warning in the record.

Mr. VERTREES. You say it has not all been read. Was it not all read awhile ago?

Mr. DAVIS. No, sir; only a part of it.

The CHAIRMAN. It is all in the record, however.

Mr. VERTREES. Now, Mr. Davis, what is the trouble between the Reclamation Service and the Geological Survey? Am I right in assuming that I draw from your evidence here that there is some feeling some way between the two services?

Mr. DAVIS. I think we are all on friendly terms, as far as I know. I know that I am with all the members of the Geological Survey that I am acquainted with.

Mr. VERTREES. Have you not put it to them very closely in your testimony here?

Mr. DAVIS. I said that I did not criticise their action in that.

Mr. VERTREES. Did you not criticise their action steadily and constantly, or do you mean to be understood as doing that?

Mr. DAVIS. I do not mean to be understood as being very critical. I expressed some opinions about it.

Mr. VERTREES. I do not mean "very," but critical?

Mr. DAVIS. Possibly I did.

Mr. VERTREES. Do you not know—not only "possibly," but actually you did? Now, what is the trouble?

Mr. DAVIS. There is no trouble that I know of.

Mr. VERTREES. Why are you criticising them, then, a little—why were you criticising it here and finding objections and complaint?

Mr. DAVIS. I did not make any complaints.

Mr. VERTREES. You are showing errors in this, that, and the other. Why were you doing that as to the Geological Survey to this committee, if there is no trouble?

Mr. DAVIS. Simply as showing the comparison between the two methods of withdrawal. I was asked the question whether or not the broad withdrawal was justified and which manner of withdrawal was wiser, and in answering that question I had to point out the differences and the various defects.

Mr. VERTREES. Then, as I understand you, there is no sort of feeling on your part either of jealousy on the one hand, or that you have been unjustly treated in any way toward the Geological Survey or the members thereof who control it?

Mr. DAVIS. I think Mr. Smith in some of his bulletins made some criticisms or references, at least, to the Reclamation Service not quite justified.

Mr. VERTREES. That was what I was trying to get at.

Mr. DAVIS. Yes, sir; that is, I have talked that over, and I am satisfied that he did not mean anything very severe. The Geological Survey has to get annual appropriations, and they like a little free advertising once in a while, and it is all right.

Mr. VERTREES. Your people generally like advertising, do they not?

Mr. DAVIS. Not the kind we get.

Mr. VERTREES. You did maintain a bureau, did you not, for the very purpose of getting it—it is not what you got but what you want?

Mr. DAVIS. No, sir. That was not an advertising bureau. The work that is being carried on now is about the same as it always has been.

Mr. VERTREES. You say they want appropriations, and your department did, too, did it not—want appropriations?

Mr. DAVIS. No, sir.

Mr. VERTREES. You had your fund coming in all the time?

Mr. DAVIS. Yes, sir; that is it.

Mr. VERTREES. But your statutes, as you understood it, required to be expended in a certain way, did it not, Mr. Davis? Now, when the question came up of these restorations under these blanket withdrawals, as we called them, and the matter was presented to your service, the question of expense at once presented itself, and you suggested, did you not, that you did not think it was allowable for the necessary expenses to be paid out of the fund of the Reclamation Service?

Mr. DAVIS. I do not believe that I made that suggestion; possibly I did. We talked the question over, Secretary Ballinger and I, and asked him for his ruling.

Mr. VERTREES. Did he rule on the question? You say you asked him for a ruling. Did he rule on the question?

Mr. DAVIS. Did I say I asked him for a ruling?

Mr. VERTREES. I thought so.

Mr. DAVIS. I asked him for instructions on what I should do. That is what I meant.

Mr. VERTREES. Mr. Smith, of the Geological Survey, was present, was he, at that time?

Mr. DAVIS. No, sir.

Mr. VERTREES. At the time you mention did he not give you instructions?

Mr. DAVIS. No, sir; he talked over the matter. He had instructions written out, but in talking it over he concluded not to deliver them, and on my suggestion he sent for George Otis Smith, the Director of the Geological Survey, and redirected the letter to him.

Mr. VERTREES. Was not that redirection after the question of two things was discussed—that is to say, the available appropriation, the fund that could be used for the purpose, and the nature of the data that the Geological Survey had at its command?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And putting the two things together, it was then determined that the matter of determining what lands should be restored should be imposed as a labor upon the Geological Survey?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And thereupon that letter was written?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And after that had been done, and as you left the building of the Secretary of the Interior, did you not have a conversation with Mr. Smith, of the Geological Survey, on the very subject, in which you expressed to him your gratification that this had been done?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. That it had been gone over?

Mr. DAVIS. I suggested it.

Mr. VERTREES. Because of the fact that you doubted the question of your money's being available, and also because he expected criticism on account of these blanket withdrawals?

Mr. DAVIS. I do not recall that; I may have done so. The matter of money being available, I think, was in my mind more regarding the inconvenience of sparing it.

Mr. VERTREES. The essential thing is that you do not recall, but you may have said that?

The CHAIRMAN. Mr. Vertrees, will you permit me to call your attention to the fact that on pages 1738 and 1739 of the testimony this point is covered fully, especially commencing at the foot of page 1738 and ending on page 1739?

Mr. VERTREES. I do not think I mentioned the conversation that I asked about with reference to Mr. Smith.

Mr. PEPPER. Had you finished your answer, Mr. Davis?

Mr. DAVIS. I believe so. I do not remember now.

Mr. VERTREES. Now, is it not a fact that they do have in that department, if I may use that, a survey and more complete data for the purpose than you have in the Reclamation Service?

Mr. DAVIS. Slightly.

Mr. VERTREES. In other words, do they not have the stream-flow records there?

Mr. DAVIS. The stream-flow records are also in our office. They are published there excepting a few that are in preparation for publication.

Mr. VERTREES. Were they used at all in these withdrawals that you made?

Mr. DAVIS. Perhaps so; I think they were—that is, we have the information of them. The information contained in them was used.

Mr. VERTREES. They had topographic surveys also.

Mr. DAVIS. Yes, sir.

Mr. VERTREES. You did not have those, did you?

Mr. DAVIS. Yes, sir; we had those maps.

Mr. VERTREES. Then you had everything that they had.

Mr. DAVIS. No, sir; I have already stated that there is some of that matter that is in process of preparation for publication that we did not have, but can get it on requisition.

Mr. VERTREES. They did have more data?

Mr. DAVIS. A little more.

Mr. VERTREES. Some more, nevertheless.

Mr. DAVIS. None that was not accessible to us.

Mr. VERTREES. You could have gotten it?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. But you did not have it?

Mr. DAVIS. No, sir.

Mr. VERTREES. Now, I understand that. You spoke when you testified with respect to Mr. Perkins, as to what happened with reference to the black-tent lectures, that it was not uncommon for some of the government officers to receive honorariums, as you expressed it.

Mr. DAVIS. Did I say not uncommon? They sometimes do.

Mr. VERTREES. What did you mean by that?

Mr. DAVIS. I have been paid for technical articles that I have written for engineering journals from time to time.

Mr. VERTREES. Have you delivered any addresses?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Were you paid for them?

Mr. DAVIS. Not since I have been in the Reclamation Service, I believe.

Mr. VERTREES. That is what I am asking; since you have been in the Reclamation Service, have any of the officers in the Reclamation Service or employees in the Government been paid for addresses?

Mr. DAVIS. Oh, yes, sir; Mr. Newell delivered a few lectures to the Yale College and received payment, which approximate his expenses, very year. That has been in progress for many years.

Mr. VERTREES. So he does?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. You, you say, have not received any?

Mr. DAVIS. I do not recollect any.

Mr. VERTREES. Can you think, if your answer is not exact.

Mr. DAVIS. I said since the passage of the reclamation act I have not received pay for any lecture—I do not recall any.

Mr. VERTREES. Were you receiving pay for any lectures of any character prior to the passage of the reclamation act?

Mr. DAVIS. Once or twice I was paid for lectures.

Mr. VERTREES. What was the nature of those lectures?

Mr. DAVIS. The Panama Canal—the Isthmian Canal.

Mr. VERTREES. Where did you deliver those lectures?

Mr. DAVIS. One was in Cleveland, Ohio, and one in Pittsburg.

Mr. VERTREES. Who paid for them?

Mr. DAVIS. The local organization that requested my presence.

Mr. VERTREES. And they paid you for those lectures? You recall that?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Now I come back to Mr. Perkins. Did I understand you to tell the committee that it was your understanding of that situation that what Mr. Perkins had done had been against the direction of Secretary Ballinger?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Or, to speak more precisely, that the Secretary had said: "Yes; you can undertake this, provided all the railroads come into it, but you can not unless they all do."

Mr. DAVIS. That is my understanding.

Mr. VERTREES. And then your understanding is that instead of doing that, Mr. Perkins really, when only a portion of the railroads had contributed, did carry on his black tent course of lectures?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Now, the first man sent down to investigate was named Huffer?

Mr. DAVIS. Huffer. Well, Mr. Newell made inquiries first, but the first man sent to make a thorough investigation was Mr. Huffer.

Mr. VERTREES. This man was placed there by Mr. Newell; that is, by the Reclamation Service?

Mr. DAVIS. Mr. Perkins?

Mr. VERTREES. Mr. Perkins.

Mr. DAVIS. Yes, sir.

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Mr. VERTREES. And reported to them all the time, did he not?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Mr. Huffer was sent to investigate?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. That Huffer report is what I want to ask you about. He made a report to whom?

Mr. DAVIS. I think it was sent to the director.

Mr. VERTREES. It came to the director's office?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. You saw it?

Mr. DAVIS. I did.

Mr. VERTREES. You have said that you spoke to Mr. Ballinger about that report?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Did you ever say to Mr. Ballinger that there was a report that showed this man guilty of certain improper conduct?

Mr. DAVIS. I did—certain conduct which I described, which I considered improper; yes, sir.

Mr. VERTREES. Well, now, you told Mr. Ballinger that recently in his office?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Isn't this what happened, Mr. Davis, and happened in the presence of Mr. A. C. Campbell also—you know him, do you not?

Mr. DAVIS. I do.

Mr. VERTREES. And that you said to the Secretary that you had offered to show him the Huffer report and that he replied that he did not care to see it?

Mr. DAVIS. Yes; that is true.

Mr. VERTREES. You told him that?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. The Secretary replied to you that he did not remember any such occurrence; that he would not say that you did not mention the Huffer report, but he asked you pointedly if you had ever said to him that the Huffer report contained any such charge as you then indicated, and that you replied that you did not believe you had ever told him any such thing as that?

Mr. DAVIS. Well, that is true; but you are not talking about the same charge that I spoke of. The charge that is referred to is one that has not been brought out before this committee.

Mr. VERTREES. What is that?

Mr. DAVIS. The charge that I was then discussing and which I admitted was not in the Huffer report, and that I did not tell him about, was the one I did not know about at the date that I told him about the other one.

Mr. VERTREES. What was the charge?

Mr. DAVIS. That was that Mr. Perkins was favoring the railroad that was paying him by favoritism in routing shipments.

Mr. VERTREES. Well, you then told him about that?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Now, what happened when you told the Secretary about that—what did he say?

Mr. DAVIS. My recollection was that he said he had not heard it before, so I told him that I had found out subsequently to our other interview, and subsequently to his taking action in the matter.

Mr. VERTREES. You sent, or, rather, your director sent, Doctor Lind out to investigate the matter?

Mr. DAVIS. Not that matter.

Mr. VERTREES. Well, I know; the other matter.

Mr. DAVIS. It is simply organization.

Mr. VERTREES. That you mentioned before the committee.

Mr. DAVIS. The organization only.

Mr. VERTREES. And you said the Secretary reprimanded the director, Mr. Newell, for doing that, did you not?

Mr. DAVIS. I said that to the committee?

Mr. VERTREES. Isn't that so?

Mr. DAVIS. No.

Mr. VERTREES. What was the reprimand?

Mr. DAVIS. The reprimand was for asking for Mr. Perkins's resignation.

Mr. VERTREES. That was the reprimand, and not for the other investigation?

Mr. DAVIS. That is my recollection.

Mr. VERTREES. You have stated that this man Lind, who went out there, was hostile to Mr. Perkins.

Mr. DAVIS. I presume so; it seemed so; I presume that is so; Perkins said so.

Mr. VERTREES. And did not you and Mr. Newell both know that at the time you sent him out there?

Mr. DAVIS. I did not know it; I do not think that Mr. Newell knew it either.

Mr. VERTREES. You do not think that possible?

Mr. DAVIS. No; I do not think that possible.

Mr. VERTREES. But you do say that you did not know it then?

Mr. DAVIS. No, I didn't know it then.

Mr. VERTREES. Was it not a fact that Mr. Lind's condition, physical and otherwise, was such that he was not able to make a report?

Mr. DAVIS. No, not at that time. Mr. Lind had been ill a long time and had been in the hospital, and had been cured; I considered him to be perfectly normal then.

Mr. VERTREES. Now, the Secretary did send two men, Evans and Callahan, did he not?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And who were they?

Mr. DAVIS. They were furnished from the Secretary's office.

Mr. VERTREES. From what department?

Mr. DAVIS. Under Mr. Evans, the disbursing officer, I think they were; that is my understanding, but I can not swear to it.

Mr. VERTREES. They were capable men, were they not; capable accountants?

Mr. DAVIS. I know nothing about them.

Mr. VERTREES. You knew nothing to the contrary?

Mr. DAVIS. I know nothing to the contrary.

Mr. VERTREES. Do you know what their report showed?

Mr. DAVIS. I read it.

Mr. VERTREES. Do you recall what it showed?

Mr. DAVIS. I do.

Mr. VERTREES. What was it?

Mr. DAVIS. The three main points the report showed were: First, that the Chicago office was badly organized and badly managed.

That was stated in emphatic terms from the beginning; that it was costing twenty-four thousand and some odd dollars per year, when it was estimated by them that the same work could have been done for seventeen thousand and some odd dollars. A third essential of the report was that Mr. Perkins had not given any attention to the business of that office since last August, and this report was made in December. Those three things seemed to me to condemn Mr. Perkins.

Mr. VERTREES. The Secretary stated to you, however, did he not, that the office should be reorganized?

Mr. DAVIS. He did.

Mr. VERTREES. But that Mr. Perkins should be retained?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Looking over the report, he determined on those reports that came to him that Mr. Perkins should be retained?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. What were your feelings toward Mr. Perkins?

Mr. DAVIS. What are they?

Mr. VERTREES. Yes.

Mr. DAVIS. My feeling toward him is that he has done a wrongful act, and he ought to be separated from the service.

Mr. VERTREES. I am not on your judgment as a citizen and as a patriot, but I am on your personal feelings toward him.

Mr. DAVIS. We had always been friendly, up to the time that he did this wrongful act. Then I felt as though he had deceived us and was not worthy of full confidence, but personally there has never been any differences or disturbances.

Mr. VERTREES. You stated that he had failed to make good, as you expressed it, as an engineer, down in Colorado?

Mr. DAVIS. He made good on the topographic work.

Mr. VERTREES. Was there any trouble between you and him on that account?

Mr. DAVIS. Oh, no.

Mr. JAMES. Was there ever any investigation made to see whether Mr. Perkins was favoring one railroad as against the others?

Mr. DAVIS. Yes. That is contained in the subsequent report of Mr. Huffer. Mr. Huffer reports: I know nothing about the basis of this, except it is a written report, that out of a large number, I think two hundred and thirty odd shipments from Chicago or vicinity to Mesa, Ariz., which is the shipping point for the big Roosevelt project, and where large shipments go, 59 per cent, approximately, of those shipments, were shipped by way of the Illinois Central to New Orleans and over the Southern Pacific, which was the longest of three possible routes, but was all Southern Pacific or Harriman haul; that is, all those lines were controlled by the Harriman system. The shortest way was partly over the Rock Island to El Paso, and the rest of the way over the Southern Pacific, and a smaller percentage, I think about 37 per cent, went that way, and 4 per cent went over the Santa Fe. I believe the Santa Fe is slightly higher priced, which would account for that, if that is the case, but I am not informed on that point. But the major portion, 59 per cent, went over the long haul, which, by time, takes from four to ten days longer to deliver the freight; and he received a protest from the Salt River project against sending over that line on account of

lay, but in spite of that protest he had sent 59 per cent of the shipments over that line, and those shipments have averaged larger than those that went over the short line.

Mr. JAMES. Did he send them over the Harriman lines because he would do so cheaper than over the others?

Mr. DAVIS. I do not know in regard to that, but I think not.

Mr. VERTREES. Did not the report of Evans and Callahan show that there was a saving to the Government of many thousands of dollars by routing it that way, and they absolutely commended Mr. Perkins?

Mr. DAVIS. Upon that point?

Mr. VERTREES. Taking the whole thing, notwithstanding the fault at they found with him?

Mr. DAVIS. They did not say that the routing by way of New Orleans instead of El Paso—

Mr. VERTREES. I am not on the particular routing.

Mr. DAVIS. That is what I am talking about.

Mr. VERTREES. I am on the question of the general routing from Chicago to the West.

Mr. DAVIS. You mean the benefit of the railroad contracts?

Mr. VERTREES. Yes.

Mr. DAVIS. The railroad contracts?

Mr. VERTREES. Does it not show that they were largely beneficial to the Government and that the Government had profited by the contract he made in that respect?

Mr. DAVIS. Yes; and they gave the credit all to Mr. Perkins, where it does not belong.

Mr. VERTREES. Who does it belong to? To you?

Mr. DAVIS. No.

Mr. VERTREES. To Mr. Newell?

Mr. DAVIS. Not entirely.

Mr. VERTREES. It belongs some to Mr. Newell and some to you?

Mr. DAVIS. Not entirely to either.

Mr. VERTREES. Answer my question. I said some; not entirely.

Mr. DAVIS. Let me have time to think.

Mr. VERTREES. If you will just answer my questions we will have no trouble.

Mr. DAVIS. But Mr. Newell is the director of the service, and I think he is entitled to credit for every good thing that is done.

Mr. VERTREES. We will give him some. So he is entitled to some?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. You are a subordinate; are you entitled to some, or not?

Mr. DAVIS. I think so.

Mr. VERTREES. Now, we are getting down to it. You are entitled to some and Mr. Newell is entitled to some; and Perkins got all of it?

Mr. DAVIS. He got it in the report.

Mr. VERTREES. And he was not entitled to it?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. I understand that.

Mr. JAMES. I think Mr. Perkins made the claim that he did some special stunts around there that gave him a sort of big pull with the railroads?

Mr. DAVIS. Yes. But the idea of getting those special rate contracts originated on the Uncompahgre project, without any assistance

of Mr. Perkins, and on the initiative of Mr. Fellows, and some of those later contracts were made by Mr. Cass, who had the matter in hand, and at some later date I was called upon by the representative of the Northwestern Railroad and his attorney, who came in very much perturbed because the Northwestern road had not been extended the benefit of these contracts and demanded a similar contract. I told him there would be no objection to that, and we would be very glad to execute the same kind of a contract with them. So that after it was initiated with a few railroads there was no difficulty in getting the others; Perkins rendered good service however.

Mr. OLMSTED. How do the rates paid by the Government compare with those paid by private parties?

Mr. DAVIS. They vary at various places. There are four provisions in this contract, and the settlement may be made on whichever one is most beneficial to the Government. One is in the contract (which, by the way, would carry anyhow), the Government is of course entitled to the reductions due to the bond-aided or land-grant railroads. Another adjustment in the rate that would flow from the granting of Pacific coast terminal rates, which benefit such projects as Nevada, where the ordinary rate is the same as shipping clear to San Francisco and then back at the local rates, if that is more beneficial and brings a lower rate than the land-grant reduction that it used.

There is another that they can have, and that is what is called commodity rate, and another that, if none of those apply, then we get half-class rates, which is the ordinary high rate that is made without any special commodity provision; that occasionally applies.

The CHAIRMAN. Well, the Union Pacific is a land-grant road?

Mr. DAVIS. A bond-aided road.

The CHAIRMAN. I mean the Southern Pacific; I mean a bond-aided road or a land-grant road.

Mr. DAVIS. I think not. It is a land-grant in California. I am not certain whether it is in Arizona or not. The Illinois Central is not.

The CHAIRMAN. That is a land-grant road.

Mr. JAMES. Does this report show whether or not the routing of freight over the Harriman lines increased or diminished after he had become an employee of the railroad company on this black-tent lecturing tour?

Mr. DAVIS. I am not informed on that point. The report does not show.

Mr. JAMES. Well, in shipping goods there, would not the proper method be to get the cheapest route?

Mr. DAVIS. It would be; certainly.

Mr. JAMES. Well, did he do that?

Mr. DAVIS. I am not informed on that. I presume that the rate is the same on both routes, but I am not informed on that point. I merely stated what is in Mr. Huffer's report; and as that came after the Secretary's action, I took no further movement in the matter.

The CHAIRMAN. You may proceed now, Mr. Vertrees.

Mr. VERTREES. When Evans and Callahan were preparing, under the Secretary's direction, to go up to investigate this Perkins matter at Chicago, you were informed of the fact that they were to go, were you not?

Mr. DAVIS. I was.

Mr. VERTREES. And did not Mr. Ballinger direct you to turn over the papers relating to the matter to them?

Mr. DAVIS. I do not think so. He directed us to turn over the report of Doctor Lind. That had not yet arrived, but when it did arrive it was sent.

Mr. VERTREES. Did he not say to you and direct you to give over the papers to the gentlemen who were going to investigate the situation?

Mr. DAVIS. I think not; I do not recall.

Mr. VERTREES. In point of fact, did you give them the Huffer report?

Mr. DAVIS. I am not sure.

Mr. VERTREES. Are you not very sure you did not?

Mr. DAVIS. No, sir; I do not know.

Mr. VERTREES. Is it your information that the report was given to them or withheld?

Mr. DAVIS. I have never looked it up.

Mr. VERTREES. Is it your information that that report was given or withheld? I did not ask you what you had looked up. I asked you the state of your information.

Mr. DAVIS. I have no information on the point. I do not think the Secretary ever asked us to give any papers to those people except the report of Doctor Lind.

Mr. VERTREES. They were going out to investigate, and it would have been in order for them to have all the papers?

Mr. DAVIS. I should say so.

Mr. VERTREES. It would have been in order to do it without an order from the Secretary, if they were going?

Mr. DAVIS. The report had already been discredited.

Mr. VERTREES. I did not ask you that. I asked you if it would not be in order?

Mr. DAVIS. I am answering your question.

Mr. VERTREES. Are you?

Mr. DAVIS. Yes.

Mr. VERTREES. Will you oblige me by answering my question?

Mr. DAVIS. I was under the impression that the report was to be an independent one based on their own information. I have never heard of Mr. Ballinger directing us to deliver all the papers, or the Huffer report either.

Mr. VERTREES. Would it not be in order for your office, the office that had been communicating with this man, and had him under suspicion, as you have stated, to deliver to the two officers appointed to investigate him and his office all papers relating thereto, and you did not need any order from the Secretary to have that done?

Mr. DAVIS. If it was not done, on which point I have already stated I am not informed, it did need an order.

Mr. VERTREES. So that it was not in order for your office to do it without an order from him?

Mr. DAVIS. That is my view of it.

Mr. VERTREES. But you did give him some papers—you did give them some papers?

Mr. DAVIS. I do not know about that.

Mr. VERTREES. Mr. Newell did, did he not?

Mr. DAVIS. I do not know; perhaps so.

Mr. VERTREES. But he did not give the Huffer report?

Mr. DAVIS. That is your testimony; it is not mine.

Mr. PEPPER. I think when you look at the files you will find that the correspondence covers that point between Acting Assistant Pierce and Mr. Evans and Mr. Callahan.

Mr. VERTREES. Did you have any conversation or consultation with the Secretary, you and Mr. Newell, before Evans and Callahan went there for investigation, in which you discussed the points to be investigated by those gentlemen?

Mr. DAVIS. Well, I do not know that we discussed the specific points. We discussed the situation there, and he discussed who should go. We first talked about sending some one from our office.

Mr. VERTREES. You discussed the necessity for this inquiry and investigation?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Did you then agree upon these men, or did the Secretary announce that these two men would go?

Mr. DAVIS. The Secretary decided to send men from his own office.

Mr. VERTREES. Instead of your office?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Now, you said with reference to Mr. Perkins' action that there had been no land, public lands, I mean, on the Harriman or Santa Fe lines in any of the government projects, and you took that, as I understand it, to indicate to the committee that that was one of the reasons why Perkins had not said anything; is that right?

Mr. DAVIS. No; I didn't make that statement, and I did not draw any such inference.

Mr. VERTREES. You did not make that statement?

Mr. DAVIS. No.

Mr. VERTREES. Well, then, in point of fact, in the Yuma projects, the Uncompahgre projects, and the Truckee-Carson (Nevada), projects there was quite a large amount of government land?

Mr. DAVIS. There is an immense amount of land in all those regions but not ready for settlement.

Mr. VERTREES. I mean within those projects?

Mr. DAVIS. Within those projects there is no material amount, if any, and I think there is practically no public land that has water ready for settlers.

Mr. VERTREES. I am not on the waters.

Mr. DAVIS. That is what I said, and that is an essential part.

Mr. VERTREES. But still it will be ready; the project contemplates that it shall in the near future be ready, and it is being prepared for settlers, is it not?

Mr. DAVIS. Some of it is; yes, sir.

Mr. VERTREES. The land is subject to homestead entry, is it not?

Mr. DAVIS. No; it is not, where the water is ready.

Mr. VERTREES. You stated that this water was not ready?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. So that this is open, is it not?

Mr. DAVIS. No; wherever the water is ready for the land, the land has been taken. That is what I am talking about.

Senator SUTHERLAND. Is that true on the Truckee-Carson project?

Mr. DAVIS. Yes, sir. We have ready a limited water supply, and the contract for storage at Lake Tahoe has been held up for a year, and we can not receive any more settlers there for that reason. It would be an embarrassment to have any more come in at present.

Mr. VERTREES. This is called the Truckee-Carson project in Nevada?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. I find in the Eighth Annual Report of the Reclamation Service, by Mr. Newell, the director, for the year 1908, this statement, on page 130 [reading]:

Settlement. On June 30, 1909, there were in effect 307 homestead entries, containing 25,016.83 acres of irrigable land; 354 water-right applications for 31,355.1 acres of land; and contracts recognizing 12,934.2 acres of land with vested water rights. The total area unsettled or not applied for amounted to 57,894 acres.

That was open to settlement, was it not—that last quantity?

Mr. DAVIS. I do not know; I think not. That is the detail that I do not know.

Mr. VERTREES. Did you not then add:

The new area settled during the fiscal year was small—

meaning to plainly say that it was opened to settlement but had not been settled?

Mr. DAVIS. No, I think not. My recollection regarding that is—

Mr. VERTREES. This may refresh your memory, I think [reading]:

Many inquiries from prospective settlers were received, but settlement has not been encouraged, and will not be encouraged until the storage dam at Lake Tahoe is built and under the control of the United States.

Mr. DAVIS. That is exactly the situation.

Mr. VERTREES. While it was not encouraged, they still had the right to do it?

Mr. DAVIS. No. My impression is that the land was withdrawn from all forms of entry. I know the land upon the Truckee-Carson project was at one time withdrawn, and I believe still is.

Senator FLINT. Returning to the Truckee-Carson project for a moment: As a matter of fact the Reclamation Service has been sending within the last few months literature advertising for settlers on the Truckee-Carson project?

Mr. DAVIS. There may have been some literature sent out, but the settlers have not been encouraged to come to the Truckee-Carson project.

Senator FLINT. In what length of time?

Mr. DAVIS. I think it has been over a year now; and in 1909 there was a water shortage there, and there have been no inquiries and we have been very careful not to encourage any settlement on the project within the last year and a half. That was an exceptionally dry year, and it rather embarrassed us a little while. Nineteen hundred and nine was a wetter year, and we had plenty of water, but even the present available supply is not sufficient to accommodate any more settlers.

Mr. VERTREES. Now, Mr. Davis, you have made a statement as to the conversation that you had with Mr. Ballinger in June, 1909—about the 10th of June?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Wherein he informed you that he had decided to make a change in the office of director?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And you advised against it?

Mr. DAVIS. I did.

Mr. VERTREES. He put it on the ground, as he thought, of the incompetency of the director?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. But you stood for your chief, and said you thought he was competent?

Mr. DAVIS. I said I thought the men in the service thought so.

Mr. VERTREES. What did you think about it?

Mr. DAVIS. I agreed with them, but I did not tell him so at that time. I think he inferred it pretty fairly.

Mr. VERTREES. You agreed with the engineers on that subject?

Mr. DAVIS. Yes, sir; he could fairly infer that from my statements.

Mr. VERTREES. He could fairly infer that you meant to commend Mr. Newell? Now, after that, June 10, did he not make an extended trip west and see the district engineers, a number of them, go around with them, and talk with them?

Mr. DAVIS. He did.

Mr. VERTREES. He saw them himself?

Mr. DAVIS. He did.

Mr. VERTREES. And spent the summer months in doing that?

Mr. DAVIS. Largely.

Mr. VERTREES. So that you would have to admit, would you not, that in the fall of the year, say the month of November, he certainly had opportunity to converse with many of the men of the service and get their views as well as yours?

Mr. DAVIS. Certainly.

Mr. VERTREES. You do not know what those men told him?

Mr. DAVIS. No, sir.

Mr. VERTREES. You do not know whether they made any complaints in any way about the disorganization of the service or the impropriety of the removal of Mr. Newell?

Mr. DAVIS. No, sir.

Mr. VERTREES. Or whether he talked to any of them—

Mr. DAVIS. On that subject?

Mr. VERTREES. Yes.

Mr. DAVIS. No; I do not recollect that I ever heard that he did.

Mr. VERTREES. You have no knowledge, but he certainly had opportunity to see for himself?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. What the district engineers and other employees of the Government thought of the situation?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Now, you have said that the present situation is one of disorganization and does need straightening out in some way?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And he signified to you that he meant to do that?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. He told you that very recently?

Mr. DAVIS. That he means reorganization. That is not necessarily disorganization, at all.

Mr. VERTRESS. I did not mean the point of extreme disorganization; but it is not as efficient as it should be and needs reorganization. That is what you understood him to mean, is it not?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Now, another thing, and then I will conclude. Mr. Davis, as I understand your testimony, you came here and stated many facts in detail, both with reference to the records and conversations, and yet when you approached the stand you objected to being called as a witness?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Showing an apparent reluctance?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Why?

Mr. DAVIS. Because it was genuine. I would much rather not be on the stand. It is not any fun to me.

Mr. VERTREES. Were you not fully prepared with data, and dates, and illustrative maps, and a multitude of things to testify?

Mr. DAVIS. I had a number of things to illustrate what I had to say.

Mr. VERTREES. Made specially for the purpose?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Submitted to counsel opposing and explained to them—

Mr. DAVIS. Opposing who?

Mr. VERTREES. Opposing me.

Mr. DAVIS. Oh, yes. I did not understand what you meant.

Mr. VERTREES. You say yes to it, do you?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. You mentioned the fact that you contributed to the Engineering Journal, Mr. Davis?

Mr. DAVIS. To the Engineering News.

Mr. VERTREES. To the Engineering News; that is the paper you referred to?

Mr. DAVIS. Yes, sir; I have contributed to it.

Mr. VERTREES. Have you contributed recently?

Mr. DAVIS. No, sir.

Mr. VERTREES. Well, here is an article entitled "Secretary Ballinger and the United States Reclamation Service," in volume 63, part 1, January 13, 1910. Did you contribute that?

Mr. DAVIS. I did not.

Mr. VERTREES. Do you know who did?

Mr. DAVIS. I do not; I have no idea.

Mr. PEPPER. Will you put that in?

Mr. VERTREES. No, sir. He says he does not know anything about it.

Mr. DAVIS. I would like to have it go into the evidence if it can.

Mr. PEPPER. Yes; I would like to have it go in, too.

Mr. VERTREES. Why do you want it to go in, Mr. Davis?

Mr. DAVIS. Because it has been mentioned.

Mr. VERTREES. I merely asked you if you were the author of it.

Mr. DAVIS. I am not the author.

Mr. VERTREES. If you had been the author, I would have put it in; but as you deny the authorship, of course, it is not evidence. That is all.

Mr. PEPPER. Mr. Davis, is it or is it not the fact that before you went upon the stand you had the advantage of a conference with Mr. Vertrees and his associates?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Is it or not a fact that you went to the Secretary of the Interior and stated to him with frankness what the testimony was that you proposed to give?

Mr. DAVIS. Most of it I did. I said to him that I had been asked to testify, and that the first person who asked me to testify (whose name I will submit if the committee desires it) is a mutual friend of Mr. Pinchot and myself. He asked me what my desires were, and said that he came to me privately to find that out. I told him in emphatic language that I did not desire to appear in this case at all; that it would be extremely embarrassing and I did not believe my testimony would be valuable to either side. He disagreed with that and asked me to take a different view, and I held to that until the attorney sent for me, in which case I had either to back down or—

The CHAIRMAN. Which attorney sent for you?

Mr. DAVIS. Mr. Pepper, and shortly after that the attorneys of the other side sent for me, and I had such conference as they desired.

Mr. GRAHAM. Who was that?

Mr. DAVIS. That was Mr. Vertrees and his associates.

Mr. PEPPER. Now, referring to the letter written by Mr. Ballinger to the President under date of August 2, will you please state clearly whether or not you, either at the time it was read to you or at any other time, including to-day, in any way expressed assent to what purported to be the statement of facts which it contained?

Mr. DAVIS. I never did.

Mr. PEPPER. Do you in fact assent to them as statements of facts?

Mr. DAVIS. They are mostly opinions. There are a number of them that I very distinctly dissent from.

Mr. PEPPER. Now, Mr. Davis, when Secretary Ballinger came into office in the early part of March last, he found in force this policy of power-site withdrawals, did he not?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. And you regarded that as an important policy?

Mr. DAVIS. Certainly.

Mr. PEPPER. He reversed that policy, did he not?

Mr. DAVIS. Yes, sir.

Mr. PEPPER. Did Mr. Lawler's advice given to him, as you understand it, require or call for the restoration of all power sites withdrawn under the reclamation form?

Mr. DAVIS. It did, as I understood it. That is the result of the conference that the three of us had reached; we reached that conclusion. My impression was that both Secretary Ballinger and Mr. Lawler questioned the good faith, although I do not recall that they stated that; but I pointed out the difference between those and the kind of withdrawals that had been made in the past, and concealed nothing, stating that these had been withdrawn at the instance of Secretary Garfield, and we made that the deciding point.

Mr. MADISON. You say they questioned the good faith of those withdrawals?

Mr. DAVIS. They gave me the impression that they did in their own minds; they did not in the conversation.

Mr. MADISON. What do you mean by questioning the good faith of the withdrawals?

Mr. DAVIS. They being good faith reclamation projects, inasmuch as they were ordered restored.

Mr. OLMSTED. What do you mean by questioning them in their own minds, if they didn't say anything about it?

Mr. DAVIS. That is only an inference in my mind.

Mr. OLMSTED. You do not wish to pose as a mind reader, do you?

Mr. DAVIS. No, sir.

Mr. PEPPER. Did the advice which Mr. Lawler gave to Mr. Ballinger, as you understand it, include the legal necessity for the restoration of power sites withdrawn otherwise than under the reclamation act?

Mr. DAVIS. Oh, yes, most decidedly; no question about it. The only point under discussion was as to where to draw the line in the reclamation withdrawals.

Mr. PEPPER. So that it was a flat-footed opinion requiring the immediate restoration of all the Garfield withdrawals; is that right?

Mr. DAVIS. That was the result.

Mr. MADISON. Now, then, was there anything said at the time that these withdrawals were in effect ordered, or restoration was ordered with regard to their rewithdrawal?

Mr. DAVIS. No, sir.

Mr. MADISON. Was there any intimation of any kind, or any design or intention to rewithdraw after those lands had been restored?

Mr. DAVIS. None that reached me.

Mr. MADISON. Well, was there any intimation of any kind to the effect that the withdrawals should be permanent, or the restorations should be permanent?

Mr. DAVIS. Why certainly; the intimation that they were illegally made would imply that it could not be done again, in my mind legally.

Mr. MADISON. But afterwards they were withdrawn?

Mr. DAVIS. Yes, sir.

Mr. MADISON. How long afterwards?

Mr. DAVIS. I do not remember the date. The last restoration that was made under the order of Secretary Ballinger was April 16; I do not remember the date of the first one.

Senator PURCELL. If you will look on page 86 it will show you.

Mr. MADISON. I know it has been gone over several times, but I forget those dates.

Mr. PEPPER. I was going to ask him a question that will bring that out, if I may, Judge Madison?

Mr. MADISON. All right.

Mr. PEPPER. The restorations were made in pursuance of the opinion given in your hearing, to the effect that these withdrawals of Mr. Garfield were all illegal; is that not true?

Mr. DAVIS. That is true.

Mr. PEPPER. Is it not the fact that on or about April 23d, the policy of making these restorations in pursuance of that opinion was reversed?

Mr. DAVIS. It is a fact.

Mr. PEPPER. Isn't it a fact that in Mr. Pinchot's letter of November 4 to the President, he stated that that was the fact?

Mr. DAVIS. I am not familiar with that letter; I never read it.

Mr. PEPPER. I refer you, and refer the committee, to page 1235 of the testimony, and to this language referring to his conference with the President, in the middle of April, where he uses this language:

Thereupon the policy of restoration was reversed; what had been considered illegal and inexpedient was seen to be necessary and within the law, and the rewithdrawal began.

You find that so stated there, do you not?

Mr. DAVIS. Yes, sir.

Mr. MADISON. Do you know why that reversal took place?

Mr. DAVIS. Why?

Mr. MADISON. Yes.

Mr. DAVIS. When the Secretary announced, preparing his instructions to me, which he afterwards modified, addressed to Director Smith, he said that he had taken the matter up with the President and I inferred from that—if I may be allowed the inference—that the President had directed him to do it.

Mr. PEPPER. Now, then, Mr. Davis, in looking at the top of page 1258, where Mr. Ballinger's letter to the President of November 17 appears, do you not there find this language [reading]:

That the policy of restoration has not been and was not reversed is self-evident, and has been amply demonstrated.

Do you find that?

Mr. DAVIS. I see it.

Mr. PEPPER. Is not that a statement that is contrary to the facts?

Mr. DAVIS. It seems so to me.

Mr. PEPPER. Mr. Davis, when Senator Carter inquired about these restorations, did not Mr. Ballinger take the responsibility of saying that he had ordered the land restored to public domain?

Mr. DAVIS. The letter so reads.

Mr. PEPPER. Isn't it a fact that when Governor Herrick and Mr. Wills and others inquired about it, he put the responsibility on the Reclamation Service?

Mr. DAVIS. I inferred that from the letters.

Mr. PEPPER. Isn't it a fact that when Senator La Follette inquired on the same subject, Mr. Ballinger put the responsibility on the Reclamation Service?

Mr. DAVIS. I do not know with regard to that.

Mr. PEPPER. Will you look at page 1181 of the testimony and tell me whether you find it there written as follows—I refer to the bottom of page 1180 or the top of page 1181, under date of March 30, April 7 and April 10:

I restored to the public domain the lands in the States of Montana, Oregon, and Idaho, upon the recommendation of the Director of the Reclamation Service by advising that the information in his possession would not warrant the further restoration of the lands, his bureau not being in possession of the funds with which to make the necessary investigations.

Do you find it so written?

Mr. DAVIS. I have so read it.

Mr. PEPPER. Is that in accordance with the facts or contrary to the facts?

Mr. DAVIS. It is not in accordance with the facts as I understand.

Mr. PEPPER. Mr. Davis, looking at the bottom of page 1189, where you find—

Mr. DAVIS. Mr. Chairman, this has all been gone over, I think

Senator FLINT. I was just going to suggest that to Mr. Pepper.

Mr. PEPPER. I am going to lead up to a question which I think, in view of the cross-examination, I have the right to ask.

The CHAIRMAN. We have covered all this ground.

Mr. PEPPER. I know, but in view of some questions asked, I think I can lead up to the final question I wish to ask.

At the foot of page 1189, Mr. Davis, I refer to the last paragraph of that page in the President's letter of September 13 to Mr. Ballinger, do you, or do you not, find the statement which you understand to place the responsibility for these restorations upon the Reclamation Service?

Mr. DAVIS. Where?

Mr. PEPPER. At the foot of page 1189.

Mr. DAVIS. Beginning "You also advise me?"

Mr. PEPPER. "Soon after you became secretary," etc.

Mr. DAVIS. Yes; I am familiar with that.

Mr. PEPPER. "And that they recommend that it be returned to the public domain?"

Mr. DAVIS. Yes, sir.

Mr. PEPPER. What is the fact in regard to that?

Mr. DAVIS. I do not regard the recommendation we made—I know that I did not initiate it—and I did not regard it as fairly coming under the description of a recommendation, because it indicates that the recommendation was initiated by us; but, as a matter of technical fact, it was a recommendation.

Mr. PEPPER. With reference to Judge Madison's question a few minutes ago, will you look at the top of page 1235, and in the course of Mr. Ballinger's letter of November 15 to the President, and tell me whether or not there is an implication that the original restorations were made in pursuit of the plan to rewithdraw, if that corresponds to your understanding of what the fact was?

Mr. DAVIS. It is in here, is it?

Mr. PEPPER. I ask you to look at page 1235, in the paragraph beginning "Regarding the assertions of Mr. Garfield," to the part in which this language occurs, "In working it out I could find no solution except by way of restoration and rewithdrawal."

Mr. DAVIS. Oh, yes [reading]: "In the manner in which it was handled."

Mr. PEPPER. Yes.

Mr. DAVIS. I do not understand him to have any intention to rewithdraw at the time restorations were made. He never so indicated to me.

Senator FLINT. It is unfair to this committee to keep on that. Our time is at least worth something.

Mr. PEPPER. I now wish to ask the final question, which I think I have the right to ask.

The CHAIRMAN. You have been a long time getting to it. You are trifling with the committee. We have gone all over this.

Mr. PEPPER. I beg your pardon. I am not trifling with the committee.

The CHAIRMAN. You are.

Mr. PEPPER. Well, I regard that, sir, as an unwarranted reflection upon counsel.

The CHAIRMAN. We went all over this ground yesterday, and the record will show it.

Mr. PEPPER. I regard, sir, that I am within my rights in redirect examination; and while I shall yield, of course, sir, to the decision of the committee—

The CHAIRMAN. Proceed with your question.

Mr. PEPPER. I beg your pardon. I have been publicly told by the chairman of this committee that I am trifling with the committee.

The CHAIRMAN. I think so.

Mr. PEPPER. I wish to know whether that is the judgment of the committee.

The CHAIRMAN. That is my judgment.

Mr. PEPPER. I would like to know whether it is the judgment of the committee.

The CHAIRMAN. I will put that question to the committee.

Senator FLINT. Let it pass.

Mr. PEPPER. If you will, sir. [After a pause.] I will take it as having been passed at the suggestion of the committee.

Mr. DAVIS, having rehearsed these matters of facts to you, I call your attention to the fact that in your testimony—and I want to call your attention to it seriously—you used this language:

And I want to say further, that in all that I have said I do not mean, from the first time I took the stand, to in any way reflect or insinuate that Secretary Ballinger has intentionally or consciously done a wrong act; I do not believe he has.

Now, I ask you whether you will be kind enough to express the full thought which you had when you testified as above?

Mr. DAVIS. With the exception of the expression "I do not believe he has," the statement certainly should stand as it is, and in explanation of the last part, regarding my belief, my view of the matter, if the committee wants to hear it, which is simply a belief—

Mr. PEPPER. You have expressed your opinion, and I want you to express it fully.

Mr. DAVIS (continuing). Is that Mr. Ballinger had not appreciated the full bearing of many acts that he has done, and that he has not appreciated, perhaps, the full bearing of some things he has said, but the language I have used does not refer to anything that he has said, but only to his acts.

Mr. PEPPER. In other words, the statement I have just read to you is to be regarded, or is it not to be regarded, as an expression of approval of the things done?

Mr. DAVIS. Certainly not an approval of anything done or said. It is simply a disclaimer of any charges against Secretary Ballinger.

Mr. PEPPER. Is it to be understood as expressing your assent to statements of facts in the letters that I have referred to?

Mr. DAVIS. Oh, no; by no means.

Mr. VERTREES. I would like to ask just a question or two.

The CHAIRMAN. Please do not go over the same ground a third time.

Mr. JAMES. I believe it would be just to Mr. Pepper to state that, in view of the fact that he was collating all of these different things for the purpose of putting the final question, the statement that he was trifling with the committee would hardly be in keeping—

The CHAIRMAN. I think so. This last question he went over the matter the third time, and when Mr. Vertrees cross-examined him as to that, and it was the third time his statement as to this point was brought before the committee.

Mr. JAMES. Mr. Chairman, I think he had the right to sum up. I believe it is the practice generally adhered to by lawyers to collate all

ese facts for the purpose of asking his final question, which related ally to all of these matters.

The CHAIRMAN. All I can say, Mr. James, I disagree with you; that all, and will have to stand in that shape.

Mr. JAMES. I merely wanted my objection to be noted to that statement.

Mr. GRAHAM. I do not want my silence to be construed as assenting the chairman's views. I do not assent to them.

Senator FLETCHER. I do not understand that there has been any tion of the committee on this matter at all.

Mr. MADISON. The chairman has merely expressed his own opinion, without attempting to express the opinion of the rest of the mmittee.

Senator FLINT. While this matter is being considered, I would like say this: Counsel intend to argue this case, do they not?

Mr. BRANDEIS. Yes, sir.

Senator FLINT. Am I correct, Mr. Pepper?

Mr. PEPPER. If the privilege is given to us, I would like to take lvantage of it.

Senator FLINT. The reason I am asking this question is that many mes a document is in evidence and the testimony is repeated time and time again; it is for some purpose of counsel, I presume; but it has been introduced or if the witness has testified to the fact, it ems to me that that could be brought out in the argument. Now, e are very, very busy; we are devoting our time here to this mat- r, and if counsel will only aid us in getting through this matter as ickly as possible, and not repeating the matters that may seem mportant to counsel; but as I say, once being in evidence it can be ough to our particular attention by argument, and it would be great saving to us. I am certain that counsel would aid us to at extent.

Mr. PEPPER. I should certainly do anything that I can to aid you. think in the case of a witness who has been on the stand for a reater part of two days, and I think I am not exaggerating when I y that I did not take more than ten minutes in redirect examina- on. I should like to say that the matter about which I examined a redirect examination was a matter which was not elicited by any uestions of mine, but was a statement volunteered by the witness, nd was considered by Mr. Vertrees to be of such great importance at he gave special instructions to the stenographer to have it ruck off in advance and manifolded and placed at the disposal of ll here.

Mr. VERTREES. He had no such instructions from me. I merely sked him to give me a copy.

Mr. PEPPER. Perhaps I overstated it.

Mr. VERTREES. You certainly do.

Mr. PEPPER. But the stenographer was courteous enough to give me copy, and, understanding that it was regarded by Mr. Vertrees as a matter of considerable importance, I deemed it my duty, sir, to ascer- ain, as has now been ascertained from the witness, precisely what he meant when he said what he did. If this is trifling with this com- mittee, I am perfectly willing to stand convicted of trifling.

Senator FLINT. What I was directing attention to was the fact that Mr. Davis himself called the attention of the committee to the fact hat he testified to all these matters in direct examination. Now, the

matter did only take a short time, but I am asking counsel if they will not aid us in future to that extent.

The CHAIRMAN. Do you have any questions, Mr. Vertrees?

Mr. VERTREES. Just two—maybe three.

The CHAIRMAN. Go on.

Mr. VERTREES. Mr. Davis, who was this man that you testified you would give his name to the committee?

Mr. DAVIS. It was Professor Wills.

Mr. VERTREES. Now, I wish to ask you with reference to this paper that you had a conversation with me. You were asked by me to state what you knew about the matters being investigated, were you not?

Mr. DAVIS. The power sites you ask about?

Mr. VERTREES. And you related then the conversation with Mr. Ballinger?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. And Mr. Lawler?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. Did you relate anything else to me at all touching any matters in the office?

Mr. DAVIS. I gave you an account of my interview with the Secretary at the hotel, similar to what I have given the committee here and many other things.

Mr. VERTREES. What other things except these conversations? Did you tell me, Mr. Vertrees, Mr. Davis, did you tell him anything else in the world than the conversations you had referred to at the hotel and in the presence of Mr. Lawler?

Mr. DAVIS. Oh, yes; I told you many conversations I had with the Secretary at the department. I answered all your questions.

Mr. VERTREES. Were you not asked to state whether there was any other matter or thing that cut either way, to state it, and was not that all you stated to the gentlemen present in reply to the question?

Mr. DAVIS. No; I stated to you that I related these various matters.

Mr. VERTREES. Was not that question put to you as to everything you knew, whichever way it might cut?

Mr. DAVIS. About power sites?

Mr. VERTREES. Everything in regard to this matter.

Mr. DAVIS. What matter? The power sites?

Mr. VERTREES. I mean the Secretary of the Interior's conduct in his office.

Mr. DAVIS. No; you did not ask me any such question as that. But I did, however, go to Secretary Ballinger and told him the essence of these things, and I spent nearly two hours—a little over an hour.

Mr. VERTREES. I am on the question with me, Mr. Vertrees. Secretary Ballinger was not present, was he, then?

Mr. DAVIS. No; at the time I saw you; no.

Mr. VERTREES. You saw Mr. Vertrees once.

Mr. DAVIS. On this subject; yes.

Mr. VERTREES. You say you had seen the other people before that?

Mr. DAVIS. Yes, sir.

Mr. VERTREES. You were requested by him, were you not, to tell all you knew about the matter every way—and was not that the question put to you by him in the presence of other gentlemen?

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1931

Mr. DAVIS. About it? You said about this matter, and you were talking about power sites.

Mr. VERTREES. No; about these investigations and the matters under investigation, the conduct of the Secretary of the Interior's office?

Mr. DAVIS. No; he did not ask anything about the conduct of the Secretary of the Interior's office.

Mr. VERTREES. The only question, then, was about power sites?

Mr. DAVIS. That is my understanding.

Mr. VERTREES. That is all you mean?

Mr. DAVIS. I do not recall anything else.

Mr. VERTREES. That is all.

The CHAIRMAN. The record will show the following returns to documents called for from the Interior Department:

THE SECRETARY OF THE INTERIOR,
Washington, March 11, 1910.

SIR: Your letter of March 7 requested:

"Copies of all notices of approval by the Auditor for the Interior Department of accounts between the Forest Service and the Indian Office since September 3, 1908, and described on pages 1415 to 1429, inclusive, of record of testimony."

In compliance with said request, there is forwarded herewith certified copy of all settlements made by the Auditor for the Interior Department since September 3, 1908.

Your attention is invited to the fact that the copy herewith does not correspond with the accounts described in pages 1415 to 1429 of the testimony, for the reason that only two of the accounts involved in said settlements are printed in the testimony; one on pages 1415 to 1418, inclusive, and the other on pages 1424 to 1427, inclusive, although copies of all of them were furnished to the committee.

One of the accounts contained on pages 1419 to 1423 is still awaiting settlement in the Indian Office, and the one contained on pages 1428 and 1429, having been settled prior to September 3, 1908, copy thereof is not included with the papers herewith.

Very respectfully,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee of Congress,
United States Senate, Washington, D. C.*

[Incls.]

THE SECRETARY OF THE INTERIOR,
Washington, March 12, 1910.

SIR: Careful search has been made for the papers requested in paragraph 2 of the memorandum which accompanied your letter of the 7th instant, and I have the honor to transmit herewith such correspondence, etc., from or to all persons mentioned in said paragraph as has been located in the files of the department or elsewhere; also a communication from Chief of Field Service Schwartz, to which is attached the original letter of June 10, 1908, with accompanying affidavit from L. R. Glavis to the Commissioner of the General Land Office. Your attention is invited to the statement of Mr. Schwartz in respect to the letter requested in paragraph 3 of the memorandum which accompanied your letter. There is also herewith letter from the Commissioner of the General Land Office with respect to paragraph 2 of the above-mentioned list, with accompanying correspondence from Mr. McEniry to the commissioner; also a communication from Mr. Murphy relative to the said paragraph 2. Mr. McEniry has been called upon to submit any papers or correspondence in his possession coming within said paragraph 2, which will be forwarded to the committee as soon as received.

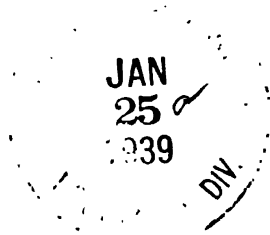
Very respectfully,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
*Chairman Joint Committee of Investigation,
United States Senate.*

The CHAIRMAN. The committee will stand adjourned until Friday at 10 o'clock.

(Accordingly, at 5.25 the committee adjourned until Friday, March 18, 1910, at 10 o'clock a. m.)



NO. 21

**ARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

MARCH 18, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

MEMBERS OF THE JOINT COMMITTEE

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California.

GEORGE SUTHERLAND, Utah.

ELIHU ROOT, New York.

WILLIAM E. PURCELL, North Dakota.

DUNCAN U. FLETCHER, Florida.

MARLIN E. OLMSTED, Pennsylvania.

EDWIN DENBY, Michigan.

E. H. MADISON, Kansas.

OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, Secretary.

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Mr. VERTREES. No; about these investigations and the matters under investigation, the conduct of the Secretary of the Interior's office?

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SIR: Your letter of March 7 requested:

"Copies of all notices of approval by the Auditor for the Interior Department of accounts between the Forest Service and the Indian Office since September 3, 1908, as described on pages 1415 to 1429, inclusive, of record of testimony."

In compliance with said request, there is forwarded herewith certified copy of all settlements made by the Auditor for the Interior Department since September 3, 1908. Your attention is invited to the fact that the copy herewith does not correspond to the accounts described in pages 1415 to 1429 of the testimony, for the reason that only two of the accounts involved in said settlements are printed in the testimony; one on pages 1415 to 1418, inclusive, and the other on pages 1424 to 1427, inclusive, though copies of all of them were furnished to the committee.

One of the accounts contained on pages 1419 to 1423 is still awaiting settlement in the Indian Office, and the one contained on pages 1428 and 1429, having been settled prior to September 3, 1908, copy thereof is not included with the papers herewith.

Very respectfully,

R. A. BALLINGER, *Secretary.*

Hon. KNUTE NELSON,

*Chairman Joint Investigating Committee of Congress,
United States Senate, Washington, D. C.*

[Encls.]

THE SECRETARY OF THE INTERIOR,
Washington, March 12, 1910.

SIR: Careful search has been made for the papers requested in paragraph 2 of the memorandum which accompanied your letter of the 7th instant, and I have the honor to transmit herewith such correspondence, etc., from or to all persons mentioned in said paragraph as has been located in the files of the department or elsewhere; also a communication from Chief of Field Service Schwartz, to which is attached the original letter of June 10, 1908, with accompanying affidavit from L. R. Davis to the Commissioner of the General Land Office. Your attention is invited to the statement of Mr. Schwartz in respect to the letter requested in paragraph 3 of the memorandum which accompanied your letter. There is also herewith letter from the Commissioner of the General Land Office with respect to paragraph 2 of the above-mentioned list, with accompanying correspondence from Mr. McEniry to the commissioner; also a communication from Mr. Murphy relative to the said paragraph 2. Mr. McEniry has been called upon to submit any papers or correspondence in his possession coming within said paragraph 2, which will be forwarded to the committee as soon as received.

Very respectfully,

R. A. BALLINGER, *Secretary.*

Hon. KNUTE NELSON,

*Chairman Joint Committee of Investigation,
United States Senate.*

The CHAIRMAN. The committee will stand adjourned until Friday at 10 o'clock.

(Accordingly, at 5.25 the committee adjourned until Friday, March 11, 1910, at 10 o'clock a. m.)

FRIDAY, MARCH 18, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., March 18, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10.30 a. m.

Present: Senators Nelson (chairman), Flint, Sutherland, Root, Fletcher, and Purcell; Representative Madison; Mr. Paul Sleman, secretary; also Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; also Mr. George Wharton Pepper and Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; also Mr. John J. Vertrees and Carl Rasch, representing Secretary Ballinger; also Mr. E. C. Finney.

The CHAIRMAN. The committee will please come to order. At the last hearing Mr. Davis, the engineer, was requested to supply certain information to be inserted in the record in reference to the salary of Mr. Perkins. I have his letter here, and if there is no objection I will have it inserted in the record, after submission to counsel. It relates to the salary of Mr. Perkins, and is something which Mr. Davis was required to supply. Is there any objection to putting that into the record?

Mr. PEPPER. No, sir; we have none.

Mr. VERTREES. None at all.

The CHAIRMAN. It will be inserted in the record.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE.
Washington, D. C., March 15, 1910

HON. FRANK P. FLINT,
United States Senate, Washington, D. C.

SIR: In accordance with your request I send herewith the salary record of Mr. E. T. Perkins, for insertion in the record:

July 1, 1902, joined the Reclamation Service as engineer, at salary of \$2,200 per annum.

January 1, 1905, promoted to engineer at \$2,400 per annum.

April 15, 1905, promoted to engineer at \$3,000 per annum.

June 1, 1908, promoted to engineer at \$3,300 per annum.

Very respectfully,

A. P. DAVIS, *Acting Director*

The CHAIRMAN. The record will show the following calls for the production of documents from the files of certain executive departments:

WASHINGTON, D. C., *March 12, 1910*

HON. KNUTE NELSON,
Chairman Joint Investigating Committee.

DEAR SIR: (1) Referring to my request for papers dated March 5, 1910, and Secretary Ballinger's letter to you of March 12, 1910, relating thereto, I beg to call your attention to the fact that Secretary Ballinger does not transmit any reply from either Mr. Lawler, Mr. Finney, Mr. Pierce, or Mr. Carr as to letters or telegrams from or to them, or papers or memoranda made by them, respectively. I respectfully request that they be specifically requested to make written reply to such request for papers.

(2) I also beg leave to ask that the Secretary of the Interior be directed to produce a list of all Alaska coal claimants in the Katalla district other than those set forth in the report of H. T. Jones, dated August 13, 1907, together with the addresses of such claimants and the agents representing the same.

(3) Also copy of letter of Mr. Ballinger to Mr. Mondell, referred to in Mr. Ballinger's letter to Mr. Dennett, dated March 31, 1908; also letter from Mr. Dennett to Mr. Ballinger referred to in Mr. Ballinger's letter to Mr. Dennett, dated August 8, 1908

Yours, truly,

LOUIS D. BRANDEIS

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1933

WASHINGTON, D. C., March 15, 1910.

HON. KNUTE NELSON,
Chairman Joint Investigating Committee.

DEAR SIR: I beg leave to ask that the Attorney-General be requested to produce to this committee the following papers: All letters, telegrams, and other papers received by him prior to September 19, 1909, from L. R. Glavis, from Henry M. Hoyt (the attorney-general of Porto Rico), from Secretary Ballinger, or from any other person relating to the construction of the act of May 28, 1908 (the Alaska coal-land act), or to the Cunningham claims, or to the so-called Glavis charges, and copies of all letters, telegrams, and other papers sent by him to any person prior to said date in relation to any of said matters.

Yours, truly,

LOUIS D. BRANDEIS.

WASHINGTON, D. C., March 15, 1910.

HON. KNUTE NELSON,
Chairman Joint Committee.

DEAR SIR: I respectfully request that the Secretary of the Interior be requested to produce to the committee the following papers:

(1) All papers relating in any manner to the selection and approval of Ormsby McHarg as attorney for Governor McCurtain, governor of the Choctaw Indians or as attorney for the Choctaw Indians.

(2) All papers relating in any manner to the purchase by one Ewart, an officer of the Department of Justice, during the summer or fall of 1909, of certain Indian lands in the Quapaw Indian allotment in Oklahoma.

Yours, truly,

LOUIS D. BRANDEIS.

The CHAIRMAN. The record will show the following responses to calls for the production of documents:

DEPARTMENT OF JUSTICE.
OFFICE OF THE ATTORNEY-GENERAL,
Washington, D. C., March 16, 1910.

HON. KNUTE NELSON,
*Chairman Joint Committee,
United States Senate.*

MY DEAR SENATOR NELSON: I am in receipt of your favor of March 15, handing me a letter received by you from Mr. Louis D. Brandeis, under same date, asking that I be requested to produce to the committee the following papers:

"All letters, telegrams, and other papers received by him prior to September 19, 1909, from L. R. Glavis, from Henry M. Hoyt (the attorney-general of Porto Rico), from Secretary Ballinger, or from any other person relating to the construction of the act of May 28, 1908 (the Alaska coal-land act, or to the Cunningham claims, or to the so-called Glavis charges), and copies of all letters, telegrams, and other papers sent by him to any person prior to said date in relation to any of said matters."

In reply I beg to transmit herewith the only papers which seem to be on the files of this department falling within the above description, viz:

Letter addressed to me by Secretary Ballinger, dated May 26, 1909.

Letter addressed to me by Assistant Secretary Pierce, dated May 26, 1909.

Carbon copy of letter dated Portland, Oreg., March 23, 1909, addressed to the Commissioner of the General Land Office by L. R. Glavis, chief of field division.

Carbon copy of statement by H. H. Schwartz, chief of field division, as to the Alaska coal-land act of May 28, 1908.

Carbon copy of letter addressed to the Commissioner of the General Land Office by — (apparently L. R. Glavis), chief of field division, dated May —, 1909.

Letter addressed to me by Frank Pierce, Acting Secretary of the Interior, dated August 27, 1909, and carbon copy of reply to the same by the Acting Attorney-General, dated August 28, 1909.

Very respectfully, yours,

GEO. W. WICKERSHAM,
Attorney-General.

1934 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

THE SECRETARY OF THE INTERIOR.
Washington, March 17, 1910

SIR: Complying with the request contained in your letter of the 14th instant, I beg to transmit herewith:

(1) Communications from Secretary Pierce and Messrs. Finney and Carr, relating to paragraph 2 of the memorandum which accompanied your letter to me of March 7, 1910; also copy of letter from myself to Mr. Lawler, dated August 15, 1909, which Mr. Lawler states is the only correspondence in his possession coming within the provisions of your request. The subject-matter of the letter of August 5, therein referred to does not come within the provisions of paragraph 2 of the memorandum above mentioned.

The first sentence of paragraph 2 of the above-mentioned memorandum requests: "Original (or if original not available) copy of telegram of Oscar Lawler to H. H. Schwartz to which telegram of Schwartz to Lawler, appearing on page 99 of Senate Document 248, is a reply."

In this connection you are informed that the telegram from Schwartz to Lawler above mentioned was not in response to one from Lawler to Schwartz, but was in accord with a verbal understanding made before Mr. Lawler left Washington.

(2) List of coal claims in the Katalla district other than those set forth in the report of H. T. Jones, dated August 13, 1907 (S. Doc. 248, p. 453). The addresses on the list have been obtained from affidavits in special agents' reports. The local land officers at Juneau have been directed to furnish the missing addresses where the same do not appear in the list herewith, and also the names of any other claimants which their records disclose.

(3) Copy of letter from myself to Representative Mondell, dated March 30, 1908, which is the letter referred to in my letter of March 31, 1908, to Mr. Dennett; also copy of letter of March 21, 1908, from Mr. Mondell to me, to which my letter of March 30 was a reply; also copy of letter dated April 30, 1908, from Commissioner Dennett to me, which is the letter referred to in my letter to Mr. Dennett of May 8, 1908, instead of August 8, 1908, as well as copy of letter dated April 24, 1908, from me to Mr. Dennett, to which the commissioner's letter is a reply.

Very respectfully,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
Chairman Joint Committee of Congress, United States Senate.

DEPARTMENT OF THE INTERIOR.
Washington, March 16, 1910

THE SECRETARY: I can not now recall, nor is there any record in my office of any correspondence relating to the Cunningham coal claims or the so-called Glavis charges between myself and the persons mentioned in paragraph 2 of the letter of Senator Nelson to you of March 7, 1910, other than contained in Senate Document 248, and other correspondence heretofore furnished to Senator Nelson's committee.

FRANK PIERCE,
First Assistant Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, March 14, 1910

MR. SECRETARY: In response to the request of the chairman of the joint committee investigating the department that there be furnished all letters, telegrams, or memorandums addressed by me to Messrs. Ballinger, Pierce, Lawler, Schwartz, or Carr, or by them to me prior to September 4, 1909, relating to the Cunningham coal claims or Glavis charges, I have the honor to advise that I do not know of any such papers written by or addressed to me other than those already submitted and printed in Senate Document No. 248.

Very respectfully,

E. C. FINNEY,
Assistant to the Secretary.

HON. R. A. BALLINGER,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, March 15, 1910.

SIR: In so far as paragraph 2 of the memorandum which accompanied the letter to you of Senator Nelson of March 7 applies to me, I have to say that I have not, nor do the files disclose, any correspondence, etc., relating to the Cunningham cases or the Glavis charges, between myself and any of the other persons mentioned in said paragraph 2, other than as is contained in Senate Document 248 and the telegrams between Mr. Schwartz and myself forwarded to Senator Nelson with your letter of March 12.

Very respectfully,

DON M. CARR, *Private Secretary.*

HON. R. A. BALLINGER,
The Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, March 18, 1910.

HON. KNUTE NELSON,
Chairman Joint Committee of Investigation.

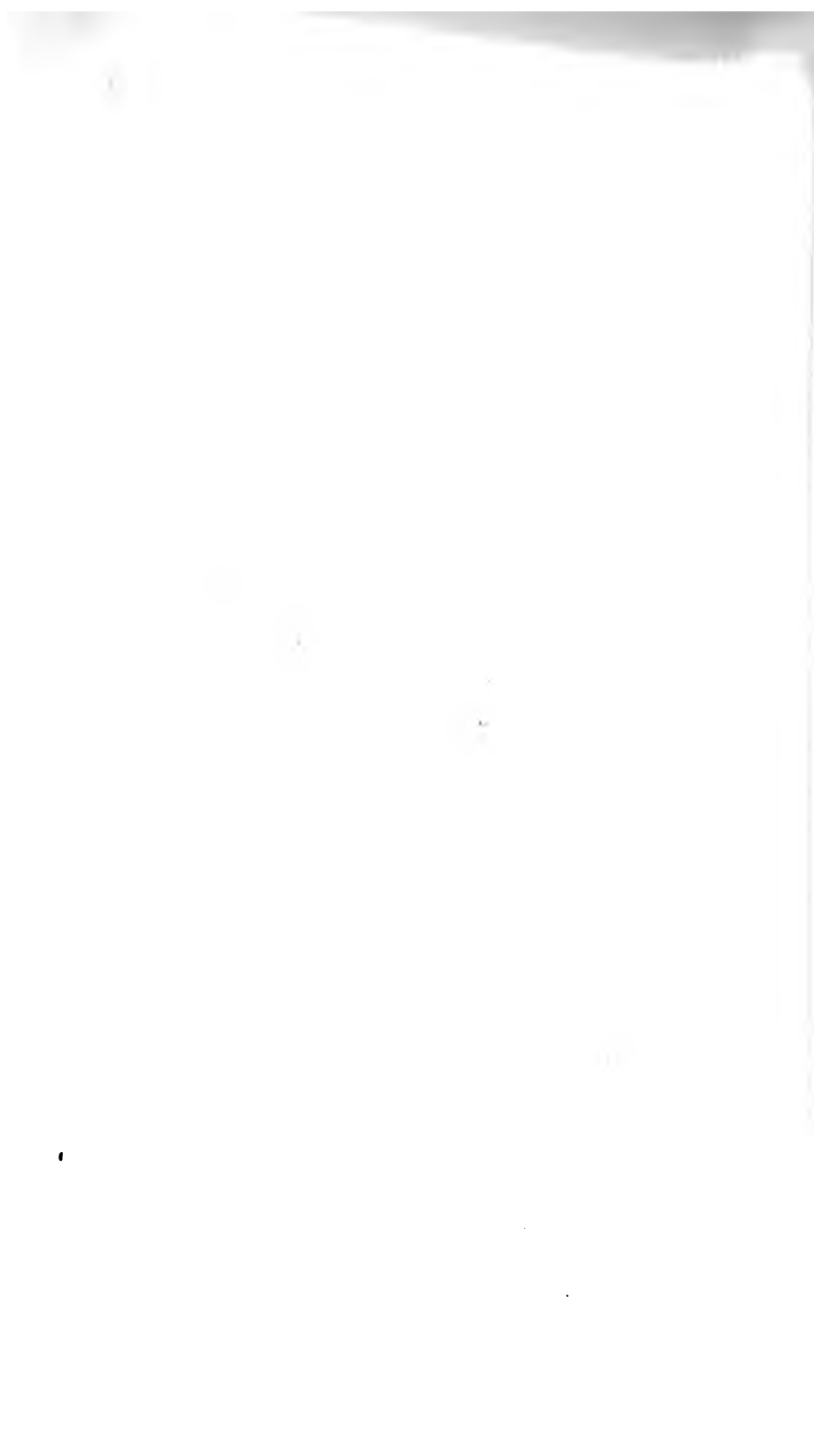
DEAR SIR: In further compliance with your letter of February 12, requesting copies of recommendations by the Reclamation Service for the restoration of lands withdrawn for reclamation and power-site purposes, and in response to specific telephonic request for the restorations described in Table 2, page 86, Senate Document No. 248, I have the honor to inclose herewith copies of the restorations of April 6 on the Green River, Wyoming; April 7 on the Colorado River, Utah; and March 20 and April 15 on the Green River, Utah. The other restorations described in said table were furnished to your committee with my letters of March 4 and 5, 1910.

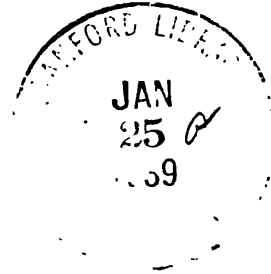
Very respectfully,

FRANK PIERCE, *Acting Secretary.*

The CHAIRMAN. In view of the conditions prevailing in the House of Representatives it is impossible to secure a quorum of the committee here to-day, and on that account we have decided to adjourn until to-morrow at 10 o'clock. The committee stands adjourned until 10 o'clock to-morrow morning.

(Accordingly at 10.35 a. m. the committee adjourned until to-morrow, Saturday, March 19, 1910, at 10 o'clock a. m.)





NO. 22

**HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

MARCH 19, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California.

GEORGE SUTHERLAND, Utah.

ELIHU ROOT, New York.

WILLIAM E. PURCELL, North Dakota.

DUNCAN U. FLETCHER, Florida.

MARLIN E. OLMSTED, Pennsylvania.

EDWIN DENBY, Michigan.

E. H. MADISON, Kansas.

OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, *Secretary.*

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1935

DEPARTMENT OF THE INTERIOR,
Washington, March 15, 1910.

SIR: In so far as paragraph 2 of the memorandum which accompanied the letter to you of Senator Nelson of March 7 applies to me, I have to say that I have not, nor do the files disclose, any correspondence, etc., relating to the Cunningham cases or the Glavis charges, between myself and any of the other persons mentioned in said paragraph 2, other than as is contained in Senate Document 248 and the telegrams between Mr. Schwartz and myself forwarded to Senator Nelson with your letter of March 12.

Very respectfully,

DON M. CARR, *Private Secretary.*

HON. R. A. BALLINGER,
The Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, March 18, 1910.

HON. KNUTE NELSON,
Chairman Joint Committee of Investigation.

DEAR SIR: In further compliance with your letter of February 12, requesting copies of recommendations by the Reclamation Service for the restoration of lands withdrawn for reclamation and power-site purposes, and in response to specific telephonic request for the restorations described in Table 2, page 86, Senate Document No. 248, I have the honor to inclose herewith copies of the restorations of April 6 on the Green River, Wyoming; April 7 on the Colorado River, Utah; and March 20 and April 15 on the Green River, Utah. The other restorations described in said table were furnished to your committee with my letters of March 4 and 5, 1910.

Very respectfully,

FRANK PIERCE, *Acting Secretary.*

The CHAIRMAN. In view of the conditions prevailing in the House of Representatives it is impossible to secure a quorum of the committee here to-day, and on that account we have decided to adjourn until to-morrow at 10 o'clock. The committee stands adjourned until 10 o'clock to-morrow morning.

(Accordingly at 10.35 a. m. the committee adjourned until to-morrow, Saturday, March 19, 1910, at 10 o'clock a. m.)

SATURDAY, MARCH 19, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., March 19, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10 a. m.

There were present as counsel: Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; Mr. George Wharton Pepper and Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; Mr. John J. Vertrees and Carl Rasch, representing Secretary Ballinger.

The CHAIRMAN. The committee will please come to order. We are now ready to proceed. I want to say before we proceed that owing to conditions in the House it may be that a majority of the committee can not be in attendance this afternoon, so we have decided that for to-day a subcommittee of five may continue the hearing of the testimony for the balance of the day. Under the resolution we are authorized to appoint a subcommittee, but that only

applies for to-day, so that if a quorum is not present the subcommittee of five will continue the testimony this afternoon.

Mr. PEPPER. I desire to call Mr. Newell, the Director of the Reclamation Service.

The CHAIRMAN. Very well.

TESTIMONY OF FREDERICK HAYNES NEWELL.

Frederick Haynes Newell, having been first duly sworn by the chairman, testified as follows:

Mr. PEPPER. What is your full name, Mr. Newell?

Mr. NEWELL. Frederick Haynes Newell.

Mr. PEPPER. And what is your present official position?

Mr. NEWELL. Director of the Reclamation Service.

Mr. PEPPER. Mr. Newell, when did you first enter the service of the United States?

Mr. NEWELL. On October 2, 1888.

Mr. PEPPER. In what capacity?

Mr. NEWELL. As assistant hydraulic engineer.

Mr. PEPPER. In what department?

Mr. NEWELL. The Geological Survey, Department of the Interior.

Mr. PEPPER. And since that time you have held what positions? Kindly enumerate them briefly.

Mr. NEWELL. I have been hydrographer, chief hydrographer, chief engineer of the Reclamation Service and director.

Mr. PEPPER. Your educational equipment includes engineering experience?

Mr. NEWELL. Yes. I am a graduate of the Massachusetts Institute of Technology in Boston.

Mr. PEPPER. And have you in the course of your work for the Government had occasion to acquire experience in reference to the use of water-power sites for reclamation and other purposes?

Mr. NEWELL. Yes. My occupation has been practically continuous with reference to the use of water.

Mr. PEPPER. In the course of these occupations have you gained any personal knowledge of the western rivers and streams in the public domain?

Mr. NEWELL. Yes; I visited most of the important rivers of the West and many of those of the eastern part of the United States.

Mr. PEPPER. And when you say you visited them, your visits had what end in view?

Mr. NEWELL. I installed methods for making measurements and systematic observation of the quantity and quality of the waters.

Mr. PEPPER. And the data acquired by you in this way is preserved where?

Mr. NEWELL. It is published in the series of water-supply and irrigation papers of the Geological Survey.

Mr. PEPPER. Is it a fact, then, that you have been a contributor, perhaps an important contributor, to the collection of data now in the Geological Survey?

Mr. NEWELL. I initiated the system and practically established all of the work as far as I can recall.

Mr. PEPPER. During your tenure of office in the Geological Survey and in the Reclamation Service has it been your custom to deliver lectures or make addresses on projects connected with the work?

Mr. NEWELL. To a certain extent, especially during the initiation of the hydrographic work of the Geological Survey.

Mr. PEPPER. Do you refer to any such lectures in particular? You have delivered some lectures at Yale, have you not, from year to year?

Mr. NEWELL. Yes. Some years ago while I was in the Geological Survey I was authorized by the director to deliver a series of lectures each year at Yale University.

Mr. PEPPER. Has that continued to the present time?

Mr. NEWELL. That has continued. I lectured last year; yes, sir.

Mr. PEPPER. What do you receive for that in the way of compensation?

Mr. NEWELL. I receive \$100 for a series of 4 or 6 lectures, that including all my expenses of preparation and car fare and travel to deliver the lectures.

Mr. PEPPER. That is \$100 for the series, or for each one?

Mr. NEWELL. For the series.

Mr. PEPPER. Mr. Newell, in the testimony at pages 1492 and 1493 there appears a letter of December 14, 1906, which has to do—

The CHAIRMAN. Will counsel suspend for a minute?

Mr. PEPPER. Certainly.

The CHAIRMAN. Mr. Steele and the other gentleman with reference to this Guggenheim syndicate are here, and the question is will you want them to-day. The committee have decided to adjourn this afternoon until next Friday; will you want them before that time? If you do not, they may go home.

Mr. PEPPER. Mr. Brandeis can answer that question; he will examine them.

Mr. BRANDEIS. Mr. Chairman, I should not think there would be any chance of needing them to-day. If there is any time left after the examination of Mr. Newell it can be occupied by the introduction of quite a number of documents which must be introduced at some time, and I think to-day will be very fully occupied.

The CHAIRMAN. Then, they can be here next Friday morning. Will that be satisfactory?

Mr. BRANDEIS. I think we should have them here next Friday, unless we have to notify them before that, by reason of the length of this examination. I think we will be ready for them by next Friday.

The CHAIRMAN. That is all. You may proceed, Mr. Pepper.

Mr. PEPPER. Directing your attention to page 1492 of the testimony, I find there a letter purporting to be signed by you to Mr. Garfield.

The CHAIRMAN. Mr. Pepper, will you be kind enough to give the book?

Mr. PEPPER. Page 1492 of the testimony; it is in the printed volume No. 2 as now before the committee.

Mr. SMYTH. It is in number 17.

Mr. PEPPER. I simply wish to ask the witness to identify the letter as having been signed by him and to state whether or not that was the beginning of your intercourse with Mr. Garfield on that subject of water-power conservation?

Mr. NEWELL. I think I had talked with Mr. Garfield before that. The letter practically covers the substance of the conversation.

Mr. PEPPER. In other words, at or about that time, you had a conference with him on the subject-matter of that memorandum, and this confirms the previous conversation?

Mr. NEWELL. Substantially; yes, sir.

Mr. PEPPER. Now what was the outcome of the conference and this letter? What was done?

Mr. NEWELL. I do not recall that any particular thing was done at the time. We continued to discuss the matter whenever we met.

Mr. PEPPER. You did have subsequent conferences with him?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. And from that time forward was the attention of the Reclamation Service and the Secretary of the Interior directed to this subject of power-site conservation?

Mr. NEWELL. The matter was one of general conversation at frequent intervals. Whenever the subject came up we discussed it.

Mr. PEPPER. Yes; but the letter which appears at page 1156, of June 2, 1908, was, as I understand it, the first official communication from the Secretary of the Interior directing the collection of data on this subject?

Mr. NEWELL. That is the first record. The matter was discussed informally at various times.

Mr. PEPPER. What, in point of fact, was your own view at that time in regard to the matters referred to in the last paragraph of that letter of June 2? In other words, were you personally in sympathy with the policy of withdrawal?

Mr. NEWELL. Yes.

Mr. PEPPER. To what extent was that really your policy?

Mr. NEWELL. It is hard to say to what extent it was mine. I had been studying the subject since 1888. I was very deeply imbued with it, and constantly talked it.

Senator FLINT. What is the date that you now refer to?

Mr. PEPPER. I am referring, Senator Flint, to the letter from Mr. Garfield as Secretary of the Interior to Mr. Newell, under date of June 2, 1908, suggesting or directing the collection of information by the service on the subject of power sites for reservoirs and other purposes—of power sites and of areas suitable for reservoir sites and other purposes. Mr. Newell, will you state, if you please, just what this plan of withdrawal was as it developed during the latter part of 1908 and the beginning of 1909?

Mr. NEWELL. There was a general consideration of the practicability of taking the subject up, and particularly of bringing it to the attention of Congress and of the people of the country—a broad discussion only, as I was away a great deal of the time.

Mr. PEPPER. And when you come to the end of the year, 1908, December, for example, I notice that certain withdrawals then begin under the terms of the reclamation act.

Mr. NEWELL. Yes.

Mr. PEPPER. And they occurred at various intervals, and are followed by withdrawals under the so-called supervisory power?

Mr. NEWELL. Yes.

Mr. PEPPER. Will you state generally what the policy was that actuated withdrawals under each of those powers?

Mr. NEWELL. As I recall the matter we saw that there were a great many of these power sites being taken up under the terms of the homestead and other acts, and became very desirous of withdrawing those which would be needed possibly, or would be considered in future irrigation developments. Mr. Garfield decided that those which he did not think would be needed in irrigation development

ould be withdrawn under his supervisory authority pending further
tion.

Mr. PEPPER. In other words, a distinction was made between
ithdrawals to be made under the reclamation act of 1902 and with-
rawals to be made under supervisory power?

Mr. NEWELL. Yes.

Mr. PEPPER. And the test which was applied as to which form of
ithdrawal ought to be used was what test?

Mr. NEWELL. As to the probability in the minds of the engineers
s to whether the power sites would be needed for future development
f irrigation?

Mr. PEPPER. If so, they were withdrawn under the reclamation
ct?

Mr. NEWELL. Yes.

Mr. PEPPER. And if not, they were withdrawn in the way you have
escribed?

Mr. NEWELL. Yes.

Mr. PEPPER. What about the theory of withdrawal as respects the
rea included within the limits of withdrawal?

Mr. NEWELL. The theory was that we should withdraw a suffi-
iently large area to cover any probable errors of survey or of descrip-
ion, and later when the withdrawal was made to gradually cut it
down by eliminating the lands which were then found not to be
necessary.

Mr. PEPPER. The description of the area withdrawn included the
oundaries of subdivisions within the limits of which were entered
ands unaffected by the withdrawals; is that not so?

Mr. NEWELL. Yes.

Mr. PEPPER. And are you able to say, either from present memory
r from refreshing thereof, what the status of this work of withdrawal
was on the 4th of March 1909?

Mr. NEWELL. Considerable withdrawals had been made and were
hen pending examination, some being ready to cut down on a more
omplete knowledge of what areas were actually needed.

Mr. PEPPER. And were there in process at that time some restora-
ions?

Mr. NEWELL. I believe so. I think, for example, the Chelan with-
drawal. There were two townships. We had concluded we could
eliminate all but a few fractional portions.

Mr. PEPPER. I show you what purports to be a copy of such a
restoration, the recommendation being signed by you and the ap-
proval signed by Mr. Ballinger, the Secretary of the Interior, and
ask whether that is the restoration to which you refer?

Mr. NEWELL. Yes; that is the one.

Mr. PEPPER. State whether or not that restoration was recom-
mended by you in the course of this paring down process.

Mr. NEWELL. Yes. This had been referred to our local engineer
and he had made the recommendation, and I transmitted it to the
department.

The CHAIRMAN. Do you offer that in evidence?

Mr. PEPPER. I offer it in evidence.

The CHAIRMAN. I call attention to it for the convenience of the
stenographer. It is admitted in evidence. You have no objection,
have you, Mr. Vertrees?

Mr. VERTREES. No, sir.

1940 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

(The recommendation is as follows:)

[File No. 8—Reclamation Service—Chelan project, Washington—Restorations.]

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Washington, D. C., March 6, 1909.

The honorable the SECRETARY OF THE INTERIOR.
(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Chelan project, Washington, the withdrawal of the following-described lands, withdrawn under the first form by departmental order of August 13, 1908, no longer appears necessary to the interests of the project.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated, and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain and become subject to settlement and entry on such dates and after such notice by publication as the Secretary of the Interior may prescribe.

CHELAN PROJECT, WASHINGTON, WILLAMETTE PRINCIPAL MERIDIAN.

T. 27 N., R. 22 E., all secs. 1 to 12, SW. $\frac{1}{4}$ sec. 13, all secs. 14 to 36, inclusive.
T. 27 N., R. 23 E., all secs. 1 to 16, inclusive, N. $\frac{1}{4}$ sec. 17, NE. $\frac{1}{4}$ sec. 18, SW. $\frac{1}{4}$ sec. 19, lot 5, sec. 20, all secs. 21 to 28, inclusive, lots 1, 4, 5, and 8, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{4}$, SE. $\frac{1}{4}$ sec. 29, W. $\frac{1}{4}$ sec. 30, all secs. 31 to 36, inclusive.

Very respectfully,

(Signed) F. H. NEWELL, *Director*.

Approved March 6, 1909, and referred to the General Land Office for action as recommended.

(Signed) R. A. BALLINGER, *Secretary*.

Mr. PEPPER. Mr. Newell, I am not sure whether this particular restoration was the restoration of land that had been withdrawn under the long-standing policy of withdrawal under the reclamation act or whether that was restoration of one of the so-called Garfield withdrawals. I do not know that it is very important.

Mr. NEWELL. I think that this was a regular reclamation first-form withdrawal.

Mr. PEPPER. First-form withdrawal?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. I think on page 86 of the Senate document there is an indication that on the 20th of March, and again on the 27th of March, certain restorations were made, the 20th of March being partial restoration of land withdrawn on the Green River, Utah, and the 27th of March a restoration of land withdrawn on the Yellowstone and tributaries in Montana. Have you a memory about them as to whether those were restorations that were made on your recommendation in the course of the paring-down process?

Mr. NEWELL. My recollection is that the Green River was one that was discussed with Senator Sutherland about that time and that I took it up and discussed it with him and then looked into the matter—into our records—rather thoroughly and concluded that it would be better to restore those lands.

Mr. PEPPER. And is the recommendation that I hand you the recommendation for restoration which you thereupon made and which Mr. Ballinger approved?

Mr. NEWELL. Yes. This is the Green River restoration approved March 20, 1909.

Mr. PEPPER. I offer that in evidence.

(The recommendation is as follows:)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., March 19, 1909.

The honorable the SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Colorado River storage, Utah, the withdrawal of the following-described lands, withdrawn under the first form by departmental order of February 17, 1909, no longer appears necessary to the interests of the project.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain and become subject to settlement and entry on such dates and after such notice by publication as the Secretary of the Interior may prescribe.

COLORADO RIVER STORAGE, UTAH; SALT LAKE, PRINCIPAL MERIDIAN, GREEN RIVER.

T. 20 S., R. 16 E., all lands within 1 mile on either side of Green River.

T. 21 S., R. 16 E., all lands within 1 mile on either side of Green River.

T. 22 S., R. 16 E., all lands within 1 mile on either side of Green River.

Very respectfully,

F. H. NEWELL, *Director*.

Approved March 20, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary*.

Mr. PEPPER. And is the one that I hand you now the one for the Yellowstone tributaries in Montana which is similarly recommended and approved?

Mr. NEWELL. Yes; this is a part of the Yellowstone that I was fairly familiar with, and concluded that we could safely restore that.

Senator FLETCHER. What is the date of that?

Mr. PEPPER. March 27. I also offer that in evidence.

(The paper is as follows:)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., March 27, 1909.

The honorable the SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Yellowstone project, Montana, the withdrawal of the following-described lands, withdrawn under the first form by departmental order of December 29, 1908, no longer appears necessary to the interests of the project.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

YELLOWSTONE PROJECT, MONTANA, MONTANA PRINCIPAL MERIDIAN.

T. 1 N., R. 14 E., all sections 8 to 20 inclusive, and section 30.

T. 1 N., R. 15 E., all sections 7, 8, 15 to 18, 21 to 27, and 34 to 36, inclusive.

T. 1 N., R. 16 E., all sections 29 to 32 inclusive.

Inasmuch as these lands are included in segregation list No. 9 by the State of Montana, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

F. H. NEWELL, *Director*.

Approved March 27, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary*.

The CHAIRMAN. Those papers are admitted without objection.

Mr. PEPPER. Now, Mr. Newell, Mr. Ballinger having become Secretary of the Interior in the early part of March, and the policy of withdrawal being then in force in the way that you have described, will you be good enough to state what conferences, if any, you had shortly thereafter with the new Secretary relative to the general policy of the department toward water-power site protection?

Mr. NEWELL. I asked him, on, I think, March 6, to take the matter up with me and go into it rather thoroughly and discuss it, so that we might understand thoroughly his wishes in the matter.

Mr. PEPPER. Was Mr. Davis at that time in Washington?

Mr. NEWELL. He was in Porto Rico at that time?

Mr. PEPPER. He has testified that he had returned from Porto Rico on March 16. Does that accord with your recollection?

Mr. NEWELL. I think so; yes, sir.

Mr. PEPPER. During the days in March intervening between March 6 and March 16, did you have more than one conference with the Secretary?

Mr. NEWELL. I had a number of conversations with him. I should hardly call them conferences.

Mr. PEPPER. Will you state as clearly as you can how these conversations were initiated and what took place?

Mr. NEWELL. I asked him to give me a time to discuss these matters, and he expressed a general willingness, but put it off from time to time, and expressed his desire and intention of restoring these large segregations.

Mr. PEPPER. Did you pay a visit or visits to him for the purpose of discussing the matter?

Mr. NEWELL. Yes; I had a series of appointments, some at 10 o'clock in the morning and some at 2.30 in the afternoon.

Mr. PEPPER. And what happened when you called?

Mr. NEWELL. He excused himself, as a rule, and said that he was busy just then and I had better come down next day or that afternoon.

Mr. PEPPER. Was there, in point of fact, prior to March 16 or 17, any conference between you in which the policy of this department on this matter of power sites was taken up for consideration?

Mr. NEWELL. He announced his intention of restoring, and I attempted to discuss the matter and show him the reasons why, in my opinion, they should not be restored.

Mr. PEPPER. And what were the reasons that you gave him? I want to get as near as I can the substance of the conversation.

Mr. NEWELL. I pointed out that the lands were already withdrawn, and that we were cutting down the areas which were not necessary and were excluding the areas which were not actually withdrawn being private ownership, and that the policy having been adopted it would be far preferable to continue it.

Mr. PEPPER. Did you make any reference to the circumstances under which it had been adopted?

Mr. NEWELL. Yes. I of course called attention to the fact that that was the policy of the past administration and had been thus adopted.

Mr. PEPPER. Was any reference made by you to Mr. Garfield in the matter?

Mr. NEWELL. At first; yes, sir.

Mr. PEPPER. Why do you say at first?

Mr. NEWELL. I became convinced that he did not like to have me refer to what Mr. Garfield had done, and thought I would not refer to again.

Mr. PEPPER. What, if anything, was the ground stated by the Secretary to you for his desiring or proposing restoration?

Mr. NEWELL. He said that they were illegal.

Mr. PEPPER. Did you understand that statement to apply to both issues of withdrawals that you have specified—I mean the withdrawals under the reclamation act and those under the supervisory power?

Mr. NEWELL. I do not think we discriminated very much, he holding they were illegal, and I holding that if they were illegal they had been done and that we should go very slowly before reversing the policy.

Mr. PEPPER. At any of these interviews prior to March 17 did you take up with the Secretary, or he with you, the details of the work of the Reclamation Service?

Mr. NEWELL. I suggested taking them up and asked that we have quiet evening together when we could take that up without being disturbed.

Mr. PEPPER. What, if anything, was done?

Mr. NEWELL. Nothing.

Mr. PEPPER. So far as you now recall, did the Secretary make any effort to obtain specific information from you respecting the Reclamation Service or its work?

Mr. NEWELL. Very little. I attempted to offer some explanation in general discussion, but he preferred to divert it.

Mr. PEPPER. Was there any mention of specific criticism by him to you of you or your work at that time?

Mr. NEWELL. No; there was no criticism—simply that at some other time we would discuss the policy.

Mr. PEPPER. When, according to your present recollection, did you first learn of any distinct or definite criticism of the Reclamation Service by the Secretary of the Interior?

Mr. NEWELL. After Mr. Davis's interview on March 17, I think he came to my house and told me in part what the Secretary had said.

Mr. PEPPER. And you are now referring to the account of that interview to which Mr. Davis has already testified?

Mr. NEWELL. Yes; that is given quite fully in the testimony.

Mr. PEPPER. Yes. I understand that following upon that conference between Mr. Davis and the Secretary a meeting took place at which at least you and Mr. Davis and the Secretary were present. Do you not know whether anyone else was there or not. How about that?

Mr. NEWELL. I think we three were together alone.

Mr. PEPPER. That is when, if you recollect?

Mr. NEWELL. I think it was the next day or the day after.

Mr. PEPPER. That is March 18?

Mr. NEWELL. Either the 18th or 19th, about that time.

Mr. PEPPER. Will you state as accurately as possible what was said by the Secretary at that time?

Mr. NEWELL. I referred to this criticism which he had given to Mr. Davis, and expressed my regret at it, and told him if our relations were to continue I hoped we could have a very plain understanding. In fact, we could not continue with that mental attitude of his.

Mr. PEPPER. Had there appeared prior to the beginning of Mr. Ballinger's term of office any public intimation, through the newspapers or otherwise, that there would be an investigation or overhauling of the service presided over by you?

Mr. NEWELL. I think there was, some time in March or late in February. There were some clippings that came to my desk.

Mr. PEPPER. I hand you what purports to be a clipping from the Seattle Post Intelligencer of February 28 headed, "Doubt land law's constitutionality," and direct your attention to this paragraph at the end of the clipping:

But that there will be a thorough investigation and overhauling of the service presided over by F. H. Newell as soon as the new Secretary of the Interior is inducted into office may be accepted as a certainty.

Is that the clipping that you have reference to, or one of them?

Mr. NEWELL. I think that is one of them. Yes, sir.

Mr. PEPPER. That seems to be a signed communication to the paper. By whom is it signed?

Mr. NEWELL. That is signed by Walter E. Clark.

Mr. PEPPER. Who is he?

Mr. NEWELL. He at present, I believe, is governor of Alaska.

Mr. PEPPER. Was he at that time or has he since been appointed?

Mr. NEWELL. Since then.

Senator FLINT. What business was he engaged in at that time?

Mr. NEWELL. I think he was a newspaper correspondent.

Senator PURCELL. What is the date of this?

Mr. PEPPER. February 24, 1909.

Mr. VERTREES. It is in one place printed February 24 and then it is written February 28.

Senator PURCELL. What year?

Mr. PEPPER. 1909. I hand you a clipping from the Denver Republican of March 13, 1909, which contains this statement:

While he was Commissioner of the General Land Office, Mr. Ballinger did not entertain a very high opinion of the Reclamation Service methods, but he was not in position to interfere. Now that he is Secretary of the Interior it is inferred that he will inaugurate changes in methods with a view to correction of many alleged short comings in Reclamation Service work.

Is that another of the utterances that you refer to?

Mr. VERTREES. You wish that to go in?

Mr. PEPPER. Yes, sir. I will put them both in, with the committee's permission.

Mr. NEWELL. Yes, sir. This I had in mind.

The CHAIRMAN. Do you offer those articles in evidence?

Mr. PEPPER. Yes, sir.

The CHAIRMAN. They are admitted.

(The newspaper articles referred to are as follows:)

[From Seattle Post-Intelligencer, February 28, 1909.]

DOUBT LAND LAW'S CONSTITUTIONALITY—SUIT IS PLANNED TO DETERMINE STATUS OF RECLAMATION ACT—PRIVATE PROJECTS HURT—FEDERAL IRRIGATION WORK ENCROACHES UPON SCHEMES OF INDIVIDUAL FIRMS.

WASHINGTON, February 24 (special).—Clouds have been gathering about the federal Reclamation Service, and if a storm breaks it will be largely the fault of the officers of that service. The metaphor may not be entirely apt or appropriate, but the fact is that Director Newell and some of his subordinates have stored up a lot of trouble for themselves, or signs fail. The most that is likely to happen is that an organized movement

ich is now on foot will result in a suit to test the constitutionality of the federal reclamation act, and the least that can be expected is that the new Secretary of the Interior, who is to take the helm on March 5, will feel the necessity of looking over the Reclamation Service with an inquisitive eye without very much delay.

The signs which point toward a suit to test the constitutionality of the reclamation act may prove to be misleading, but there is much quiet talk about it, and the persons who are talking about it have the means to fight the issue to a conclusion. Also, they seem to have the disposition to do so. It may seem surprising that an action of this kind should be begun seven years after the national irrigation law was placed on the statute books, and after a large number of extensive works have been inaugurated and completed by the Federal Government under that law, but there are reasons why such a contingency has not become imminent until this time.

PRIVATE FIRMS HIT.

The principal reason is that a number of private irrigation companies have been only recently encroached upon by the carrying out of federal projects, and the claims asserted by the Federal Government in connection with the appropriation of waters have been gradually driving some of the private companies to the wall. Here is a statement which was prepared by a responsible person for the information of readers of the Post-Intelligencer:

"It is understood that there is an organization about consummated of the different private irrigation companies throughout the West, formed for the sole purpose of testing the constitutionality of the national reclamation act, and opposing the oppression of the Reclamation Service practiced upon the different private projects. It is the opinion of some of the foremost lawyers in the West that the reclamation act is wholly unconstitutional."

Although the anonymous author of this statement is a highly responsible person, it does not follow that a federal suit to test the constitutionality of the law will ever be instituted. The reason for this is that nearly all the irrigation companies which have grievance hold that they have been unfairly treated by Mr. Newell, the head of the Reclamation Service, and in nearly every case it is within the power of the director of the Secretary of the Interior to remedy the difficulty by removing the cause of action.

IRREGULARITIES CHARGED.

It is charged by a number of men representing large private irrigation interests that the Reclamation Service is being conducted in a high-handed manner, and that while the men in charge of that branch of the Government are in some instances weak and incompetent, they constantly invoke the great power of the Federal Government to protect them in their weakness and incompetency. Bluff and bluster have become common weapons with officers of the Reclamation Service, and withal there has been disposition to employ dilatory methods in dealing with private persons and corporations who claimed that they possessed rights which should be recognized by the federal officials.

Several instances have occurred in which the Reclamation Service, instead of dealing with private claims and alleged vested rights on their merits have employed dilatory methods, at the same time conducting a campaign in local newspapers calculated to arouse public sentiment against the private claimants by representing that they have no rights which the Government or the community is bound to recognize, and that they are standing in the way of progress. Private claimants and representatives of private irrigation companies have been threatened with lawsuits which have never materialized; their credit has been attacked; and when these interests came to Washington seeking a clear statement of how they stand with the Federal Reclamation Service they have obtained no satisfaction.

COURTESY DENIED.

Some of the men representing private irrigation companies allege that it is impossible for them to obtain courteous treatment from the Chief of the Reclamation Service, although they have stated frankly that they are willing to present their claims to the Service as one business man to another, having in view the facilitating of business and the avoidance of unnecessary and expensive litigation. It is also claimed that many of the engineers in charge of projects are impractical and give more attention to the question of retaining their positions than to the practical and economical construction of irrigation works. The famous Roosevelt Dam is cited as an example in this connection, it being claimed that when the project was undertaken the cost per acre was placed at \$15. Up to date the cost is \$40 per acre.

1946 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

That there will be a federal suit to test the validity of the national reclamation may be doubted, although it is a possibility; but that there will be a thorough investigation and overhauling of the service presided over by F. H. Newell, as soon as the Secretary of the Interior is inducted into office, may be accepted as a certainty. It is by no means true that every private claimant and every private irrigation company represented as having a grievance has a good case against the Reclamation Service; but it is easily demonstrable that flagrant cases of injustice have appeared in the last year and still exist.

WALTER E. CLARK

[Denver (Colo.) Republican, March 18, 1909.]

WILL PUT LIFE INTO ARID-LAND RECLAMATION—SECRETARY BALLINGER WILL RE-ORGANIZE GOVERNMENT IRRIGATION PROJECTS AND ALSO LOOK INTO LAND AND TIMBER ABUSES.

WASHINGTON, March 12 (special).—During the coming summer the new Secretary of the Interior, Richard Ballinger, proposes visiting various Western States and Alaska to acquaint himself, through personal observation and investigation, with the land, timber, and mineral conditions, with a view to correcting abuses which exist and so that he may make practical suggestions to Congress next fall for legislation concerning western matters. Secretary Ballinger will pay particular attention to irrigation matters, and will visit all projects under construction by the Government.

While he was Commissioner of the General Land Office, Mr. Ballinger did not entertain a very high opinion of the Reclamation Service methods, but he was in no position to interfere. Now that he is Secretary of the Interior it is inferred that he will inaugurate changes in methods, with a view to correction of many alleged shortcomings in reclamation-service work.

He will look into the needs of the Indian Service and investigate in Alaska the alleged acquirement of extensive coal lands by corporations and individuals. It is probable that President Taft and Secretary Ballinger will visit Alaska about the same time.

The department force of special agents investigating alleged land frauds was increased to-day by the appointment of D. A. Millerick, of this city, to be assistant chief.

Mr. PEPPER. You say that at this interview of March 18 a further discussion took place respecting the validity of the withdrawals made. Am I right, or was it with respect to criticism of the service?

Mr. NEWELL. With respect to the criticisms. This particular clipping I objected to because it was written by Mr. Breckens, who presumably obtained his information quite directly, and my statement to the Secretary was that it would be impossible for us to continue official relations if information of that kind were given out.

The CHAIRMAN. Who was this Mr. Breckens?

Mr. NEWELL. Joseph Breckens, correspondent of the Denver Republican.

Mr. PEPPER. Well, then, this point having been made by you, what, if anything, did the Secretary say?

Mr. NEWELL. I do not recall that he said anything. He flushed up a little. I do not recall that he made any reply.

Mr. PEPPER. What, if anything, was said either upon that subject or further upon the subject of power-site withdrawals? I am speaking of the interview of March 18.

Mr. NEWELL. He said he was quite firm in his belief that he should restore those completely, and I took the other end; that if he wanted to restore most of the land he could do it, but still he should adhere to the policy which had been established.

Senator FLINT. Let me ask you, Mr. Pepper, did this conversation have reference to the Green River and Yellowstone, or was it general?

Mr. NEWELL. This related to general conditions. These restoration conditions had been made or considered.

Mr. PEPPER. Those two. The Green River was made on the 20th and the Yellowstone on the 27th, but those, as I understand, had been under construction.

Mr. NEWELL. They were under construction.

Senator FLINT. What I was endeavoring to ascertain was this, whether or not the conversation referred to the Green River and the Yellowstone or was it with reference to the general restorations?

Mr. NEWELL. No, sir; I showed that we were restoring such things as those. I pointed out the fact that those restorations would be on his desk soon, and he had already approved the Chelan and that the process was in effect whittling down and restoring the lands, and urged him to simply continue that policy of gradually cutting down the segregations, so that if he wanted he could cut them down even to three-fourths or eight-tenths or nine-tenths, and still maintain the principle of segregating the water-power sites.

Mr. PEPPER. You did mention a large proportion as a proportion that might ultimately represent the restorations?

Mr. NEWELL. Yes, sir; I pointed out that his idea was an exaggeration of the amount of the lands, because many of those lands were in private ownership and were not affected by the segregation, and the others were lands which would be found on examination to be not needed, and then still there was a third class of alternative propositions which if we adopted one site the other could be let go because it would be held by the first. So that the apparently large withdrawal did not exist in fact, but that the principle could be maintained of cutting down and restoring, apparently at least, a part of the amount which we considered as withdrawn.

Mr. PEPPER. That is to say, if you take, for illustration, a 10-acre withdrawal, your thought was that a certain proportion of that or 5 acres might turn out to be entered land, and that as to 2 or 3 there would be an alternative proposition, either to be retained for protection or restored, that there was a irreducible minimum of 1 or which ought to be kept?

Mr. NEWELL. That is substantially the idea.

Mr. PEPPER. Did you draw from him any expression upon that point?

Mr. NEWELL. His mind seemed to be on the determination to restore all of them and I was attempting to convince him of the desirability of not taking such drastic action?

Mr. PEPPER. Was anything said by him to the effect that the basis of his objection to withdrawal was that they were too broad, or that they were not for the best interests of the United States?

Mr. NEWELL. Why, he seemed to be dwelling on the legal feature of it.

Senator FLETCHER. Did he indicate at that time that he might afterwards rewithdraw some of the land?

Mr. NEWELL. Not in the slightest; no, sir.

Mr. PEPPER. Now, Mr. Newell—

The CHAIRMAN. Mr. Pepper, may I ask a question there?

Mr. PEPPER. Surely, sir.

The CHAIRMAN. Did not his legal objection at that time, or his objection as to the legality, appertain to what you call water-power withdrawals as distinguished from reclamation withdrawals?

Mr. NEWELL. He did not make that clear to me. My argument was to hold the power sites, whatever the way they were withdrawn, and his attitude was that we should restore them.

The CHAIRMAN. I mean the question of legality; he referred to that feature of it.

Mr. NEWELL. I did not attempt to discuss the question of legality with him, but simply said that it had been done; if it was illegal, that it already had been done, and there was no one to raise that question.

Senator SUTHERLAND. Will you allow me to ask a question there? Mr. Newell, do you know of any authority for the withdrawal of those power sites in connection with reclamation projects except that given by the reclamation act?

Mr. NEWELL. That is all.

Senator SUTHERLAND. That is all. So the power must be found in that act, as you understand it, or it does not exist?

Mr. NEWELL. I assumed so; yes, sir.

Mr. PEPPER. And in answering that question you are limiting yourself to those withdrawals for reclamation purposes as distinguished from withdrawals under the supervisory power?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. I understand that to be in consonance with your question, Senator. At the interview of March 18, or at any interview at all about that time, did the question of specific instructions to the Reclamation Service to report these withdrawals or restorations come up, and, if so, what took place?

Mr. NEWELL. I do not recall whether on March 18 instructions were given, but my fear was that he would order us to restore them. I was trying to put it off as far as possible and give him time to go into it carefully.

Mr. PEPPER. When did the time come, if it came, when the direction to make the recommendations for restorations arrived?

Mr. NEWELL. It was some time before the latter part of March. He was very insistent that he should restore them, and I went to my office and dictated the letter for him to sign so that I might know exactly his views, because I was not clear as to just the reasons why we should act.

Mr. PEPPER. Did you ask him to give you specific instructions?

Mr. NEWELL. Yes, sir; I asked to have written instructions on the subject.

Mr. PEPPER. And you drafted a letter?

Mr. NEWELL. I drafted the basis of an order—a rough outline—and took it to him with the request that he amplify and give us written instructions as to what course to pursue, whether we should eliminate the lands or throw them all back.

Mr. PEPPER. What did you do with the draft of the letter that you thus wrote?

Mr. NEWELL. I handed it to the Secretary.

Mr. PEPPER. Personally?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. What did he do?

Mr. NEWELL. He said "I will look into it," and put it in the corner of his desk.

Mr. PEPPER. Did you ever actually receive it back again?

Mr. NEWELL. No, sir; I received a letter of April 1, which I presumed was in place of the letter, or of the rough draft that I handed him.

Mr. PEPPER. Is that the letter which is already in the record, and about which Mr. Davis has already testified?

Mr. NEWELL. I think it is; yes, sir.

The CHAIRMAN. What page is that on?

Mr. PEPPER. I will give a reference to it in one moment, Mr. Chairman. Did you prepare the draft of a reply to be sent to that letter?

Mr. NEWELL. Yes, sir; I dictated a draft of reply just before I left Washington.

Mr. PEPPER. What, if anything, did you do with that draft?

Mr. NEWELL. I was leaving Washington for the West and handed it to Mr. Davis and asked him to look it over, and if it did not suit him to write his own letter as I would not be there to sign the final copy.

Mr. PEPPER. Mr. Chairman, the letter to which reference has just been made appears in Senate Document No. 248, at page 557, at the lower right-hand corner. I ask whether that is the letter that he received from the Secretary?

Mr. NEWELL. Yes, sir; it was the letter of April 1.

Mr. PEPPER. Then, as I understand it, you drafted a reply which you have described, and put it into the hands of Mr. Davis?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. Was that draft of yours substantially a restatement of the position which you had taken in the interviews with Mr. Ballinger?

Mr. NEWELL. Yes, sir; the draft I left with Mr. Davis was an attempt to embody the discussions that I had had with the Secretary.

Mr. PEPPER. I hand you what purports to be a letter addressed to the Secretary, with a place left blank for the signature of the Director, dated Washington, April 3, 1909, and then penciled, "Not sent." Is that the draft in question or a copy of it?

Mr. NEWELL. Yes, sir; this is the rough draft prepared at that time.

The CHAIRMAN. Mr. Pepper, I think that letter is already in evidence.

Mr. PEPPER. My best recollection is that Mr. Davis spoke of it, or described it, and stated that he made an alternative draft and submitted the two of them to Mr. Bien, but Mr. Bien rejected this one and sent the other.

The CHAIRMAN. Yes; but I think this one that was rejected is in the record. The reason why I inquire is that if it is in the record we do not print it twice. If it is in the record already, we will not print it.

Mr. PEPPER. My best recollection is that it is not in the record, Mr. Chairman. I am pretty sure about that. Will you please look at this, Mr. Vertrees?

The CHAIRMAN. If it is not in the record, it will go in now.

Mr. PEPPER. You see there would be nobody through whom it could be introduced except Mr. Newell.

Senator FLINT. Did I understand you to say that Mr. Bien rejected the letter?

Mr. PEPPER. Mr. Davis testified—and Mr. Vertrees will correct me if I am wrong—that when this letter of April 1 came, Mr. Newell was about to leave Washington, and Mr. Newell drafted his idea of a reply, which is this document; that Mr. Davis was not satisfied with this reply and thought, perhaps, it was not politic, and drafted an alternative form and said he would leave that to Mr. Bien, who was the law officer of the department, to select one and reject the other; that he selected the Davis draft and rejected this one. That, I think, is the substance of it—and I am offering this, as Mr. Newell states it was an attempt to summarize the position which he had at that time taken with the Secretary.

The CHAIRMAN. The letter is admitted. I was mistaken in thinking that it was already in the record. I think it is not in. The substitute letter, the letter that was finally sent, is in.

Mr. PEPPER. That is correct.

The CHAIRMAN. It will be printed. Have you any objection to the printing of that letter, Mr. Vertrees?

Mr. VERTREES. No, sir.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 3, 1909.

The honorable the SECRETARY OF THE INTERIOR.

SIR: Referring to your instructions of April 1 to report the reasons, if there are any, whether statutory or otherwise, why certain lands in the States of Montana, Utah, and Oregon should not be restored to entry under the public-land laws, it is desired to state that the lists of these lands were submitted in accordance with instructions from Secretary Garfield personally and presumably after a conference with President Roosevelt, and in accordance with the policy pursued by the past administration. It is of course inferred that it is not the desire to have this policy discussed at the present time, even if it were practicable to do so.

The total area actually withdrawn is far less than the area named, 677,000 acres, which is assumed to be the total area of the townships or sections named in the various lists. It is a matter of general knowledge that a part of each of these townships has already passed out of the control of the Government and that the withdrawal applies only to such sections or portions of sections as have not up to the present time been entered upon under the general laws. These parcels of land have had presumably little, if any, value or use; hence their withdrawal from entry pending further examination results in little, if any, injury or detriment to the public.

The lands withdrawn have been under the operation of one or the other of two lines of authority; the first, the supervisory authority of the Secretary, and, second, the terms of the reclamation act. This has been in order to permit opportunity for examination, it being well known that whenever the government engineers begin the survey into any matter of this kind there is general interest aroused, accompanied by filings, more or less speculative in character, on all of the commanding points. To forestall this condition it has been found necessary to make general withdrawals as an essential preliminary to surveys even of the most general character.

Under section 3 of the act of June 17, 1902 (32 Stat. L., 388), the Secretary of the Interior is required to withdraw from public entry the lands required for any irrigation works and to restore to public entry any of the lands so withdrawn when in his judgment such lands are not required for the purposes of the act. There is no limit in time stated in the act, and from an intimate knowledge of the framing of the act and of the discussion during its passage, it may be said that it was the object of Congress to look far into the future, to protect the public interests in the development and use of the remaining public lands, and not permit the interests of the nation to be jeopardized by permitting individuals to file upon lands through whose possession future use of other large tracts of land would be prevented. There is perhaps no one general duty imposed upon the Secretary requiring a larger foresight than is imposed in this act, especially in view of the rapid development which is taking place and of the impossibility of foreshadowing exactly what will or will not be done.

The methods of procedure which have been discussed are to the effect that the withdrawals of the areas under consideration be followed by a rapid reconnaissance for the purpose of restoring to public entry the lands found not needed. For this purpose photographs of the township plats are being made and furnished to the men in the field for the purpose of enabling them to go over the ground rapidly and systematically, eliminating the greater part of the area. Much of the land has not been surveyed, and in some townships the location of the rivers has not always been given with sufficient accuracy to enable correct descriptions to be readily prepared. It is air to assume that during the coming summer nine-tenths of the area can be recommended for restoration, leaving the commanding points in the hands of the Government for further consideration. These points can not be selected immediately because of the fact that many conditions must be taken into consideration. It is possible to arrive at a determination of them, not by a direct process of selection, but rather, as indicated above, by eliminating other tracts.

The statutory reasons why these lands should not be restored to entry immediately or before field examination are involved in the portion of reclamation act above quoted. The other reasons which may be cited are those broad questions of public policy, considered presumably by President Roosevelt and his Cabinet. It may be proper to point out that as a consequence of the adoption of this policy these lands are now withdrawn, and that there appears to be no demand for their immediate restoration on the ground of public welfare.

Public attention has been very prominently drawn to these lands by the fact of their withdrawal, and it is reasonable to assume that there has been a general approval of the policy and course taken in the matter. It is unnecessary to call attention to the fact that an immediate reversal of a policy which has been carefully considered and broadly commented upon would be viewed with solicitude by many well-informed citizens, and would be followed presumably by immediate filing upon all valuable power sites by men who are employed to seek for the commanding points and to secure these, if possible.

Very respectfully,

— — — — — Director.

Mr. PEPPER. Mr. Newell, was Mr. Lawler present according to your best recollection at one or more of the interviews with the Secretary when the question of legality was discussed?

Mr. NEWELL. It is my impression that he was not. I do not think he was in Washington at that time.

Mr. PEPPER. It appears that on March 30—and when I say it appears, I refer to page 86 of Senate Document No. 248—it appears that on March 30 there was a restoration of the withdrawals made under the supervisory power of a certain acreage on the Salmon River, Idaho. Do you recollect whether or not you advised that restoration, or stated that the retention of this land was no longer necessary to the interests of the United States?

Mr. NEWELL. My impression is that Mr. Davis handled that, although I approved of his action.

Mr. PEPPER. Referring to page 1893 of the testimony, I ask whether that is the form of restoration that was used?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. Now, Mr. Newell, did you in fact advise that restoration or hold or express the opinion that the retention of the land was no longer necessary?

Mr. NEWELL. That is a matter that Mr. Davis took up personally—and it is nearly a year ago—and I do not think I could give any direct statement as to that.

Mr. PEPPER. You did not act in that matter yourself at all?

Mr. NEWELL. Not personally; no, sir.

Mr. PEPPER. And with respect to the subsequent so-called recommendations of restoration, did any of those originate with you or were they initiated by you, or did you shortly afterwards leave Washington?

Mr. NEWELL. I left Washington for the field and knew nothing about the restorations until I returned.

Mr. PEPPER. Do you remember specifically when you did go away?

Mr. NEWELL. I was last in the office on Saturday, April 3.

Mr. PEPPER. That was the date when you made that draft in reply to the letter of April 1?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. Mr. Chairman, it may be recalled by you that while Mr. Davis was testifying a question came up respecting the forms used in making restorations?

The CHAIRMAN. Yes.

Mr. PEPPER. Mr. Vertrees at that time offered in evidence a file which was the file of the restorations or withdrawals made under the supervisory power and I gave notice that at a subsequent time I should offer a companion file of restorations of withdrawals made under the reclamation act. I hand this file to you, Mr. Newell, and ask whether you can tell us whether those are in point of fact the restorations that are listed on page 86 of Senate Document 248 under the head, "Withdrawals originally made in terms of reclamation projects?"

Mr. NEWELL. Those appear to be; yes, sir.

Mr. PEPPER. I notice that this was made on printed forms. What are those forms?

Mr. NEWELL. Those are forms which are approved by the department for use in that connection.

Mr. PEPPER. Had they been forms in use when paring down was made of withdrawals previously reserved under the reclamation act?

Mr. NEWELL. It is my impression that they had. They used those forms habitually without further comment.

Mr. PEPPER. I offer these in evidence, and for convenience refer to page 1890 of the testimony as being the page at which the companion file appears.

The CHAIRMAN. They are admitted.

(The papers referred to are as follows):

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 3, 1952

The honorable the SECRETARY OF THE INTERIOR,
(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the North Platte project, Nebraska-Wyoming, the withdrawal of the following-described lands, withdrawn under the first form by departmental order of December 4, 1908, no longer appears necessary to the interests of the project.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain and become subject to settlement and entry on such dates and after such notice by publication as the Secretary of the Interior may prescribe.

NORTH PLATTE PROJECT, NEBRASKA-WYOMING SIXTH PRINCIPAL MERIDIAN. WYOMING.

T. 14 N., R. 82 W., all secs. 1 and 12.

T. 15 N., R. 82 W., all secs. 7, 13 to 27, inclusive, 35, and 38.

T. 15 N., R. 83 W., all secs. 1, 2, 3, 10 to 14, inclusive.

T. 16 N., R. 83 W., all secs. 3, 4, 9, 10, 15, 16, 21, 22, 27, 28, 33, 34, and 35

T. 17 N., R. 83 W., all secs. 18 to 21, inclusive, 28 to 33, inclusive.

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T. 17 N., R. 84 W., all secs. 1, 2, 11, 12, 13, 14, 23, and 24.
T. 18 N., R. 84 W., all secs. 6, 7, 8, 17 to 21, inclusive, 26 to 30, inclusive, 34 and 35.
T. 19 N., R. 84 W., all sec. 6.
T. 20 N., R. 84 W., all secs. 17 to 20, 29 to 32, inclusive.
T. 22 N., R. 84 W., all secs. 4, 5, and 6.
T. 23 N., R. 84 W., all secs. 2, 3, 10, 11, 14, 15, 22, 23, 26 to 35, inclusive.
T. 24 N., R. 84 W., all secs. 1 to 4, 9 to 16, 21 to 28, 33 to 36, inclusive.
T. 25 N., R. 84 W., all secs. 3, 4, 9, 10, 15, 16, 21 to 28, 33 to 36, inclusive.
T. 26 N., R. 84 W., all secs. 21, 22, 27, 28, 33, and 34.
T. 18 N., R. 85 W., all secs. 1 to 4, 9 to 12, inclusive.
T. 19 N., R. 85 W., all secs. 1, 2, 3, 10 to 15, 19 to 23, 26 to 35, inclusive.
T. 20 N., R. 85 W., all secs. 2, 3, 10, 11, 12, 13, 24, 25, 35, and 36.
T. 21 N., R. 85 W., all secs. 4, 5, 6, 8, 9, 10, 13, 14, 15, 16, 23, 24, 25, 26, 35, and 36.
T. 22 N., R. 85 W., all secs. 1, 2, 3, 7 to 12, 16, 17, 18, 30, and 31.
T. 21 N., R. 86 W., all sec. 1.
T. 22 N., R. 86 W., all secs. 11, 12, 13, 14, 23, 24, 25, and 36.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved April 6, 1909, and referred to the General Land Office for action as recommended.

Secretary.

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 9, 1909.

The honorable the SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Grand Valley project, Colorado-Utah, the withdrawal of the following-described lands, withdrawn under the first form by departmental order of December 4, 1908, no longer appears necessary to the interests of the project.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain and become subject to settlement and entry on such dates and after such notice by publication as the Secretary of the Interior may prescribe.

GRAND VALLEY PROJECT, COLORADO-UTAH, SALT LAKE PRINCIPAL MERIDIAN, UTAH.

All lands within 1 mile on either side of the Grand River along its entire course from its junction with the Green River located approximately in T. 30 S., R. 18 E., to the Utah-Colorado state line in T. 19 S., R. 26 E., located approximately through the following townships, surveyed and unsurveyed.

Tps. 29 and 30 S., R. 18 E.
Tps. 27, 28, 29, 30 S., R. 19 E.
Tps. 27, 28 S., R. 20 E.
Tps. 25, 26, 27 S., R. 21 E.
Tps. 24, 25 S., R. 22 E.
Tps. 23, 24 S., R. 23 E.
Tp. 23 S., R. 24 E.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved April 10, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

1954 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 7, 1966

The honorable the SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Yellowstone project, Montana, the withdrawal of the following-described lands, withdrawn under the law form by departmental order of December 29, 1908, no longer appears necessary to the interests of the project.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain and become subject to settlement and entry on such dates and after such notice by publication as the Secretary of the Interior may prescribe.

YELLOWSTONE PROJECT, MONTANA, MONTANA PRINCIPAL MERIDIAN.

- T. 6 S., R. 7 E., all secs. 12, 13, 14, 21, 22, 23, 24, 26, 27, 28, 33, 34, and 35.
- T. 7 S., R. 7 E., all secs. 3, 4, 5, 8, 9, 16 to 21 inclusive, 28, 29, and 30.
- T. 8 S., R. 7 E., all secs. 1, 2, 3, 10, 11, 12, 13, and 24.
- T. 3 S., R. 8 E., all secs. 1, 10 to 15, 22 to 24 inclusive, 26, 27, 28, 33, 34, and 35.
- T. 6 S., R. 8 E., all secs. 3, 4, 5, 7, 8, 9, 17, and 18.
- T. 8 S., R. 8 E., all secs. 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32.
- T. 9 S., R. 8 E., all secs. 5 to 18, inclusive.
- T. 2 S., R. 9 E., all secs. 12, 13, 14, 23, 24, 25, 26, 35, and 36.
- T. 3 S., R. 9 E., all secs. 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36.
- T. 4 S., R. 9 E., all secs. 1, 2, 9 to 16 inclusive, 21, 22, 27, 28, 33, and 34.
- T. 5 S., R. 9 E., all secs. 4 to 9, inclusive.
- T. 9 S., R. 9 E., all secs. 7, 8, 9, 16, 17, and 18.
- T. 1 S., R. 10 E., all secs. 23 to 29 and 32 to 36, inclusive.
- T. 2 S., R. 10 E., all secs. 4, 5, 7, 8, 17, 18, 19, and 20.
- T. 1 S., R. 11 E., all secs. 19, 20, 21, 22, and 26 to 36, inclusive.
- T. 2 S., R. 11 E., all secs. 1, 2, 3.
- T. 1 S., R. 12 E., all secs. 10 to 17, 20 to 24, and 27 to 34, inclusive.
- T. 2 S., R. 12 E., all secs. 4, 5, 6.
- T. 1 S., R. 13 E., all secs. 1 to 12, inclusive, and 17 and 18.
- T. 1 S., R. 16 E., all secs. 4, 5, 8, 9, 10, 13, 14, 15, 16, 17, 22, 23, and 24.
- T. 1 S., R. 17 E., all secs. 16 to 22, inclusive, 25 to 29, and 32 to 36, inclusive.
- T. 1 S., R. 18 E., all secs. 26 to 35, inclusive.
- T. 2 S., R. 18 E., all secs. 1, 2, 3, 10, 11, 12.
- T. 1 S., R. 19 E., all secs. 31, 32, 33, and 34.
- T. 2 S., R. 19 E., all secs. 1 to 15 and 23 to 25, inclusive.
- T. 2 S., R. 20 E., all secs. 14 to 36, inclusive.
- T. 2 S., R. 21 E., all secs. 28 to 33, inclusive.
- T. 3 S., R. 21 E., all secs. 1 to 16, inclusive.
- T. 2 S., R. 22 E., all secs. 25 to 27 and 32 to 36, inclusive.
- T. 7 S., R. 22 E., all secs. 23, 24, 25, 26, 35, and 36.
- T. 8 S., R. 22 E., all secs. 1, 2, 3, 10 to 15, 22 to 27, and 34 to 36, inclusive.
- T. 9 S., R. 22 E., all secs. 3, 4, 5, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33, 34, 35, and 36.
- T. 10 S., R. 22 E., all fractional secs. 5 and 6.
- T. 8 S., R. 23 E., all secs. 31 to 36, inclusive.
- T. 3 S., R. 23 E., all secs. 1, 2, 3, 4, 5, 6, 12, 13, 24, 25, 36.
- T. 4 S., R. 23 E., all secs. 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36.
- T. 5 S., R. 23 E., all secs. 2, 3, 4, 5, 8, 9, 10, 16, 17, 20, 21, 28, 29, 32, and 33.
- T. 6 S., R. 23 E., all secs. 2, 3, 9, 10, 15, 16, 21, 22, 27, 28, 33, and 34.
- T. 7 S., R. 23 E., all secs. 4, 5, 7, 8, 9, 17, 18, 19, and 30.
- T. 2 S., R. 24 E., all secs. 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, inclusive.
- T. 5 S., R. 24 E., all secs. 4, 5, 6, 7, 8, 17, 18, 19, 30, and 31.
- T. 1 S., R. 25 E., all secs. 25, 26, 27, 28, 33, 34, 35, and 36.
- T. 2 S., R. 25 E., all secs. 3 to 9, inclusive, 17, and 18.
- T. 1 S., R. 26 E., all secs. 2, 3, 8, 9, 10, 11, 14 to 21, inclusive, 29, and 30.
- T. 1 N., R. 13 E., all secs. 24, 25, 26, 35, and 36.
- T. 1 N., R. 14 E., all secs. 8 to 20, inclusive, and 30.
- T. 1 N., R. 15 E., all secs. 7, 8, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 34, 35, and 36.
- T. 1 N., R. 16 E., all secs. 29 to 32, inclusive.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1955

As the withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS,
Acting Director.

Approved April 7, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 16, 1909.

The honorable the SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Yellowstone project, Montana, the withdrawal of the following-described lands, withdrawn under the first form by departmental order of February 16, 1909, no longer appears necessary to the interests of the project.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

YELLOWSTONE PROJECT, MONTANA, MONTANA PRINCIPAL MERIDIAN.

T. 1 N., R. 26 E., all secs. 13, 14, 22 to 27, inclusive, 33, 34, 35.

T. 1 N., R. 27 E., all secs. 1 to 9, 17, 18, 19.

T. 2 N., R. 27 E., all secs. 1, 12, 14, 23, 26, 27, 33, and all that part of secs. 13, 24, 25, 34, 35, and 36 lying west of Yellowstone River, and E. $\frac{1}{4}$ and SW. $\frac{1}{4}$ sec. 36.

T. 3 N., R. 27 E., all sec. 36.

T. 2 N., R. 28 E., all that part of secs. 5, 6, 7, and 18 lying north and west of Yellowstone River, E. $\frac{1}{4}$, E. $\frac{1}{4}$ SW. $\frac{1}{4}$, and SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 30.

T. 3 N., R. 28 E., all secs. 13, 14, 21, 22, 23, 29, 30, and 31, and all that part of secs. 24, 26, 27, 28, 32, and 33 lying west of Yellowstone River.

T. 3 N., R. 29 E., all secs. 13 to 18, inclusive, and all that part of secs. 19 to 24, inclusive, lying north of Yellowstone River.

T. 3 N., R. 30 E., all secs. 12 and 14 to 18, inclusive, and all that part of secs. 13 and 19 to 24, inclusive, lying north and west of Yellowstone River.

T. 3 N., R. 31 E., all secs. 4, 5, and 6, and all that part of secs. 1, 2, 3, 7, 8, 9, 10, and 18 lying north and west of Yellowstone River.

T. 4 N., R. 31 E., all secs. 33 to 36, inclusive.

T. 3 N., R. 32 E., all secs. 5, 6, and 7.

T. 4 N., R. 32 E., all secs. 1, 12, 13, 14, and 21 to 36, inclusive.

T. 4 N., R. 33 E., all secs. 2 to 10 and 16 to 19, inclusive.

T. 5 N., R. 33 E., all secs. 25 to 28 and 33 to 36, inclusive.

T. 5 N., R. 34 E., all secs. 19 to 36, inclusive.

As the withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS,
Acting Director.

Approved April 16, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

Noted on Tract Books April 30, 1909.

J. H. CLEAR, *Div. "O."*

1956 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 5, 1909.

The honorable the SECRETARY OF THE INTERIOR.
(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Yellowstone project, Wyoming, the withdrawal of the following-described lands, withdrawn under the form by departmental order of December 31, 1908, no longer appears necessary to the interests of the project.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

YELLOWSTONE PROJECT, WYOMING, WIND RIVER MERIDIAN (BIG HORN RIVER).

T. 2 N., R. 6 E., all fractional township.
T. 3 N., R. 6 E., all fractional township.
T. 4 N., R. 6 E., all fractional township.
T. 5 N., R. 6 E., all fractional township.
T. 6 N., R. 6 E., all fractional township.
T. 7 N., R. 6 E., all fractional township.
T. 1 N., R. 5 E., all secs. 4, 5, 6, 7, 8, 9, 17, 18, 19, 30, and 31.
T. 2 N., R. 5 E., all secs. 19 to 36, inclusive.
T. 1 N., R. 4 E., all secs. 24, 25, and 31 to 36, inclusive.
T. 1 S., R. 4 E., all lots 1, 2, 3, 4, 5, 6, and 7, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, and E. $\frac{1}{2}$ SW. $\frac{1}{4}$ sec. 1; lots 1, 2, 3, and 4, sec. 2; and lots 1, 2, 3, and 4, sec. 3.

SIXTH PRINCIPAL MERIDIAN.

T. 47 N., R. 92 W., all secs. 5, 6, 7, and 8.
T. 48 N., R. 92 W., all secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32.
T. 49 N., R. 92 W., all secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 20, 21, 28, 29, 32, and 33.
T. 50 N., R. 92 W., all secs. 19, 20, 29, 30, 31, and 32.
T. 45 N., R. 93 W., all secs. 5 and 6.
T. 46 N., R. 93 W., all secs. 2, 3, 9, 10, 11, 14, 15, 16, 17, 19 to 22, and 27 to 32, inclusive.
T. 47 N., R. 93 W., all secs. 1, 12, 13, 14, 15, 22 to 27, and 34 to 36, inclusive.
T. 50 N., R. 93 W., all secs. 1, 2, 3, 10 to 15, 23 to 26, inclusive, 35 and 36.
T. 51 N., R. 93 W., all secs. 3, 4, 5, 8, 9, 10, 15, 16, 17, 20, 21, 22, 23, 26, 27, 28, 33, 34, and 35.
T. 52 N., R. 93 W., all secs. 5 to 8, 17 to 22, and 27 to 34, inclusive.
T. 53 N., R. 93 W., all secs. 7, 16, 17, 18, 19, 20, 21, 28, 29, 30, 32, and 33.
T. 42 N., R. 94 W., all secs. 18, 19; N. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, and lots 1 to 5, inclusive, sec. 30.
T. 43 N., R. 94 W., all secs. 4 to 9, 16 to 21, and 29 to 32, inclusive.
T. 44 N., R. 94 W., all secs. 4 to 9, 16 to 21, 28 to 33, inclusive.
T. 45 N., R. 94 W., all secs. 1, 2, 3, 10, 11, 12, 15 to 22, and 28 to 31, inclusive.
T. 53 N., R. 94 W., all secs. 1, 2, 3, 10, 11, 12, 13, and 14.
T. 54 N., R. 94 W., all secs. 2, 3, 10, 11, 14, 15, 22 to 27, and 34 to 36, inclusive.
T. 55 N., R. 94 W., all secs. 3, 4, 5, 8, 9, 10, 15, 16, 17, 20, 21, 22, 26, 27, 28, 33, 34, and 35.
T. 56 N., R. 94 W., all secs. 4, 5, 8, 9, 16, 17, 20, 21, 22, 27, 28, 29, 32, 33, and 34.
T. 57 N., R. 94 W., all secs. 5 to 9, inclusive, 15, 16, 17, 20, 21, 22, 27, 28, 33, and 34.
T. 58 N., R. 94 W., all secs. 18, 19, 30, and 31.
T. 42 N., R. 95 W., all secs. 1, 2, 11, 12, 13, 14, 23, 24, lots 1 to 7, inclusive, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, and NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ sec. 25, and lots 1 to 5, inclusive, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, and N. $\frac{1}{2}$ NW. $\frac{1}{4}$ sec. 26.
T. 43 N., R. 95 W., all secs. 24, 25, and 36.
T. 45 N., R. 95 W., all sec. 36.

As this withdrawal has been of such short duration, and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

Acting Director.

Approved April 6, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary*

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 5, 1909.

to the honorable the SECRETARY OF THE INTERIOR,
(Through the Commissioner of the General Land Office).

SIR: From recent investigations in connection with the Colorado River storage project, Wyoming, the withdrawal of the following-described lands, withdrawn under first form by departmental order of January 2, 1909, no longer appears necessary for the interests of the project.

It is therefore respectfully recommended that so much of said departmental order relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

COLORADO RIVER STORAGE, WYOMING, SIXTH PRINCIPAL MERIDIAN.

- 16 N., R. 106 W., all secs. 5, 6, 7, 8, 17, 18, 19, and 20.
- 17 N., R. 106 W., all secs. 4 to 9, 16 to 20, and 29 to 32, inclusive.
- 18 N., R. 106 W., all sec. 31.
- 16 N., R. 107 W., all secs. 1, 2, 3, 10 to 14, 23 to 35, inclusive.
- 17 N., R. 107 W., all secs. 1, 12, 13, 24, 25, 26, 35, and 36.
- 18 N., R. 107 W., all secs. 4 to 10 inclusive, 15, 16, 21 to 27, inclusive, and 35 and 36.
- 19 N., R. 107 W., all secs. 30 and 31.
- 12 N., R. 108 W., all secs. 2, 3, 10, 11, 14, 15, 16, lots 1, 2, 3, 4, and N. $\frac{1}{4}$ sec. 20, 1, 2, 3, and 4, and N. $\frac{1}{4}$ sec. 21, lots 1, 2, 3, and 4 and N. $\frac{1}{4}$ sec. 22.
- 13 N., R. 108 W., all secs. 1, 2, 11 to 14, 23 to 26, inclusive, and 34, 35, and 36.
- 14 N., R. 108 W., all secs. 1 to 5, 8 to 14, 23 to 26, inclusive, and 35 and 36.
- 15 N., R. 108 W., all secs. 1, 12, 13, 22, 23, 24, 26, 27, 28, 33, 34.
- 16 N., R. 108 W., all sec. 36.
- 18 N., R. 108 W., all sec. 1.
- 19 N., R. 108 W., all secs. 3 to 10, 14 to 18, 21 to 27, inclusive, and 35 and 36.
- 20 N., R. 108 W., all secs. 30 and 31.
- 19 N., R. 109 W., all secs. 1 and 12.
- 20 N., R. 109 W., all secs. 3, 4, 5, 8, 9, 10, 13, 14, 15, 16, 17, 21 to 26, inclusive, and 36.
- 21 N., R. 109 W., all secs. 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 20 to 27, inclusive, and 34 and 36, inclusive.
- 22 N., R. 109 W., all secs. 6 to 9, 16 to 21 and 28 to 33, inclusive.
- 30 N., R. 109 W., all secs. 4 to 9, inclusive.
- 22 N., R. 110 W., all secs. 1, 2, 3, and 10 to 13, inclusive.
- 23 N., R. 110 W., all secs. 27 to 35, inclusive.
- 29 N., R. 110 W., all sec. 6.
- 30 N., R. 110 W., all secs. 1 to 4, 9 to 23, and 26 to 33, inclusive.
- 31 N., R. 110 W., all secs. 4, 5, 8, 9, 15, 16, 17, 20, 21, 22, 27, 28, 33 and 34.
- 32 N., R. 110 W., all secs. 4, 5, 8, 9, 16, 17, 20, 21, 28, 29, 32, and 33.
- 33 N., R. 110 W., all secs. 3, 4, 5, 6, 9, 10, 11, 14, 15, 16, 21, 22, 23, 26, 27, 28, 33, and 35.
- 34 N., R. 110 W., all secs. 28 to 34, inclusive.
- 37 N., R. 110 W., all secs. 1, 2, 11, 12, 13, 14, 15, 21 to 29, and 32 to 34, inclusive.
- 23 N., R. 111 W., all secs. 5, 6, 7 to 11, 13 to 18, and 21 to 26, inclusive, and 35 and 36.
- 24 N., R. 111 W., all secs. 19, 20, 29, 30, 31, and 32.
- 25 N., R. 111 W., all secs. 6, 7, and 18.
- 29 N., R. 111 W., all secs. 1 to 5, 8 to 12, 15, 16, 17, 20, 21, 22, 27, 28, 29, 32, 33 and 34.
- 30 N., R. 111 W., all sec. 36.
- 33 N., R. 111 W., all secs. 1, 2, 3.
- 34 N., R. 111 W., all secs. 5 to 8, 17 to 22, 25 to 29, and 33 to 36, inclusive.
- 35 N., R. 111 W., all secs. 3, 4, 8, 9, 10, 16, 17, 20, 21, 28, 29, 31, 32, and 33.
- 36 N., R. 111 W., all secs. 1, 2, 3, 11, 12, 14, 15, 22, 23, 26, 27, 33, 34, and 35.
- 24 N., R. 112 W., all secs. 3, 4, 5, 8 to 17, 21 to 25, inclusive, and 36.
- 25 N., R. 112 W., all secs. 4 to 9, 16 to 23, and 26 to 30, inclusive, and 34 and 35.
- 27 N., R. 112 W., all secs. 2, 3, 4, 9, 10, 11, 15, 16, 17, 19, 20, 21, 22, and 28 to inclusive.
- 26 N., R. 112 W., all secs. 5 to 9, 16 to 18, inclusive, 21, 22, 28, 29, 32, and 33.
- 28 N., R. 112 W., all secs. 1, 2, 11 to 14, and 23 to 27, inclusive, all secs. 34, and 36.

1958 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS,
Acting Director.

Approved April 6, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 6, 1909.

The honorable the SECRETARY OF THE INTERIOR
(Through the Commissioner of the General Land Office).

SIR: From recent investigations in connection with the Colorado River Storage, Utah, the withdrawal of the following-described lands, withdrawn under the first form by departmental order of February 16, 1909, no longer appears necessary to the interests of the project.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated, and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

COLORADO RIVER STORAGE, UTAH, SALT LAKE PRINCIPAL MERIDIAN (COLORADO RIVER).

All lands within 1 mile on either side of the Colorado River along its entire course from its junction with the Green and Grand rivers, approximately in T. 30 S., R. 15 E., to the Utah-Arizona state line in T. 44 S., R. 5 E., and flowing through the following unsurveyed townships (approximately):

Tps. 43 and 44 S., R. 5 E.
Tps. 43 and 44 S., R. 6 E.
T. 43 S., R. 7 E.
T. 43 S., R. 8 E.
Tps. 42 and 43 S., R. 9 E.
Tps. 40, 41, 42 S., R. 10 E.
Tps. 37, 38, 39, and 40 S., R. 11 E.
T. 37 S., R. 12 E.
Tps. 34, 35, 36, and 37 S., R. 13 E.
Tps. 34, 35, and 36 S., R. 14 E.
Tps. 33 and 34 S., R. 15 E.
Tps. 33 and 34 S., R. 16 E.
Tps. 31, 32, and 33 S., R. 17 E.
Tps. 30 and 31 S., R. 18 E.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved April 7, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER,
Secretary.

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 7, 1909.

The honorable the SECRETARY OF THE INTERIOR.
(Through the Commissioner of the General Land Office.)

SIR: From recent investigations in connection with the Yellowstone project, Montana, the withdrawal of the following-described lands, withdrawn under the first form by departmental order of February 16, 1909, no longer appears necessary to the interests of the project.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 1959

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated, and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

YELLOWSTONE PROJECT, MONTANA (BIG HORN RIVER), MONTANA PRINCIPAL MERIDIAN.

T. 1 N., R. 33 E., all secs. 1, 2, 3, 10 to 15, 22 to 27, and 34 to 36, inclusive.
T. 2 N., R. 33 E., all secs. 1, 2, 11 to 14, 23 to 26, inclusive, and 35 and 36.
T. 3 N., R. 33 E., all secs. 25, 26, 35, and 36.
T. 3 N., R. 34 E., all secs. 4, 5, 8, 9, 16, 17, 19, 20, 21, and 28 to 32, inclusive.
T. 4 N., R. 34 E., all secs. 2, 3, 4, 9, 10, 11, 14, 15, 16, 20 to 22, 27 to 29, and 32 and 33.

T. 1 S., R. 33 E., all secs. 1 and 2.

All lands along the west side of the Big Horn River within 1 mile thereof through townships 7, 8, 9, and 10 S., ranges 28 and 29 E., unsurveyed.

As this withdrawal has been of such short duration and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS, *Acting Director.*

Approved April 7, 1909, and referred to the General Land Office for action as recommended.

R. A. BALLINGER, *Secretary.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR.
Washington, D. C.

The honorable the SECRETARY OF THE INTERIOR
(Through the Commissioner of the General Land Office).

SIR: From recent investigations in connection with the Colorado River Storage, Utah, the withdrawal of the following-described lands, withdrawn under the first form by departmental order of February 17, 1909, no longer appears necessary to the interests of the project.

It is therefore respectfully recommended that so much of said departmental order as relates to the areas hereafter listed be vacated and that such tracts not otherwise withdrawn, reserved, or appropriated be restored to the public domain.

COLORADO RIVER STORAGE, UTAH, SALT LAKE PRINCIPAL MERIDIAN (GREEN RIVER).

All lands within 1 mile on either side of the Green River along its entire course, from its junction with the Grand and Colorado rivers approximately in T. 30 S., R. 18 E., northerly to the township line between townships 10 and 11 S., approximately in R. 18 E., Salt Lake Meridian, and flowing through the following surveyed and unsurveyed townships (approximately):

Tps. 18, 19, 23, and 24 S., R. 16 E.
Tps. 13 to 19 S., inclusive, and 23 to 30 S., R. 17 E.
Tps. 11 to 13 S., inclusive, and 25, 26, 29, and 30 S., R. 18 E., T. 11 S., R. 19 E.
Also the following-named sections located approximately in the surveyed and unsurveyed townships as hereafter described:
T. 10 S., R. 18 E., all of secs. 23 to 27 and 34 to 36, inclusive (unsurveyed).
T. 9 S., R. 19 E., all secs. 1, 12, 13 and 14, 22 to 33, inclusive (partly unsurveyed).
T. 10 S., R. 19 E., all secs. 4 to 8, 17 to 20, inclusive, and 29 and 30.
T. 7 S., R. 20 E., all of secs. 13, 24, 25, and 36.
T. 8 S., R. 20 E., all of secs. 1, 2, 11 to 14, inclusive, 22 to 27 and 32 to 36, inclusive.
T. 9 S., R. 20 E., all of secs. 1 to 6, inclusive.
T. 7 S., R. 21 E., all of secs. 1 to 9, 16 to 21, and 28 to 33, inclusive.
T. 8 S., R. 21 E., all of secs. 5 and 6.

As the withdrawal has been of such short duration, and has probably not come to general public notice, it is further recommended that the usual notice by publication limiting the time for settlement and entry be waived.

Very respectfully,

A. P. DAVIS,
Acting Director.

Approved April 15, 1909, and referred to the General Land Office, for action as recommended.

R. A. BALLINGER,
Secretary.

Mr. GRAHAM. Mr. Pepper I do not find anything at page 186 which seems to correspond with what you have referred to.

Mr. PEPPER. Maybe I have given the wrong reference. I will look it up.

The CHAIRMAN. He refers to withdrawals made for water-power purposes.

Mr. PEPPER. Mr. Chairman, on page 1890 and subsequent pages is the testimony having to do with how those forms came to be prepared and used, and then beginning on page 1893 is the actual series of restorations. I simply mention that page because it facilitates cross-reference.

Mr. GRAHAM. I think it might be misleading, and that it would be better to have it right.

The CHAIRMAN. As I understand it the papers that Mr. Vertrees introduced were what are called water-power withdrawals and these are the reclamation withdrawals.

Mr. PEPPER. That is correct; although we have rather strenuously insisted that they were all water-power withdrawals; some made on one form and some on another. Mr. Newell, on page 1180 of the testimony there appears a letter from the Secretary to Senator La Follette, under date of May 13, 1909, in which it is stated, at the top of page 1181, with regard to the land therein referred to:

Under dates of March 30 and April 7 and 10, 1909, I restored to the public domain the lands in the States of Montana, Oregon, and Idaho, upon the recommendation of the Director of the Reclamation Service, he advising that the information in his possession would not warrant the further reservation of the lands, his bureau not being in possession of the funds with which to make the necessary investigations.

Did you make such recommendation?

Mr. NEWELL. I did not.

Mr. PEPPER. Did you advise that the information in your possession would not warrant the further reservation of this land?

Mr. NEWELL. No, sir.

Mr. PEPPER. Is it or is it not a fact that you actually had protested against these restorations?

Mr. NEWELL. I protested very strongly against the throwing back of all these power sites.

Mr. PEPPER. Mr. Newell, on page 1182 of the testimony appears the letter from the Secretary to Senator La Follette, under date of May 25, 1909. I call your attention to the sentence that begins: "The difference between the method"—I will point it out to you particularly; it is in the large paragraph at the foot of page 1182 about 12 lines from the foot of the page [reading]:

The difference between the method of withdrawal is that the latter withdrawals are based upon facts actually ascertained by surveys and examination, and are confined strictly to legal subdivisions or sections containing the possible water sites, and do not, as did the original withdrawals, include large areas of no possible value for water sites, but possessing value for agriculture and property subject to disposition under the general land laws of the United States.

The CHAIRMAN. That word there is improperly spelled.

Mr. PEPPER. I am not sure whether it means "properly" or "property."

The CHAIRMAN. It should be "properly," manifestly.

Mr. PEPPER. Is it your understanding, Mr. Newell, that prior to May 25, any of the rewithdrawals had been made on the basis of new field examinations?

Mr. NEWELL. It is not my understanding that there was any new examination or additional evidence.

Mr. PEPPER. It is not specifically stated here that there had been any new surveys and examinations, but if that is the implication, what is the fact as you understand it?

Mr. NEWELL. As I understand it, there was very little difference, except that care was taken to eliminate lands which were covered by private entries and which were not influenced by the previous withdrawal.

Mr. PEPPER. And there was the adoption of a general policy to withdraw a narrower strip along streams instead of a broader one?

Mr. NEWELL. Yes; they took chances on including all the sites.

Mr. PEPPER. On page 1183 of that letter, the paragraph next to the end reads [reading]:

In brief, the former withdrawals were made largely upon insufficient information and withheld from entry large areas of public land of no possible value for power sites, while withdrawals now being made are based upon information derived from actual, accurate field examination, and are confined to the actual tracts having a possible value for power sites.

To what extent, if at all, is that a correct statement of the facts?

Mr. NEWELL. It does not appear to me to be correct.

Mr. PEPPER. That is on the basis of the Geological Survey maps; and was it not largely a matter of opinion as to what withdrawals were necessary?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. Do those maps show power sites as such?

Mr. NEWELL. They show the topography of the country, but did not give much information on which to base any knowledge of power.

Senator FLETCHER. May I ask you there, Mr. Newell, to specify wherein the statement is not correct? You say in a general way "It does not appear to me to be correct." That is not very definite; I think it would be better, if you can, to specify wherein it is not correct.

Mr. NEWELL. Taking up the first line [reading]:

The former withdrawals were made largely upon insufficient information—

I question that somewhat as being strictly accurate. The information we had was sufficient for that purpose.

The second line states [reading]:

and withheld from entry large areas of public lands of no possible value for power sites—

That is in part correct; large entries of land were temporarily held, but those lands had very little value, as shown by the fact that they had been open to entry for years and had not been entered.

Now, the third line [reading]:

while the withdrawals now being made are based upon information derived from actual, accurate field examination.

From my intimate knowledge of the Geological Survey and its men, its personnel, derived from 1888 up to the present time, I question whether they have better information than we, because Mr. Davis, myself, and many of our other engineers were the men who made these field examinations for the Geological Survey, and we took that information with us when we left, excepting such as was, of course, of record, so that I think this is an invidious comparison which hardly would hold true; at least, not from my standpoint.

Mr. PEPPER. If it means that these withdrawals prior to May 35 were based upon information derived from actual, accurate field examination for the purpose of such withdrawals, what is the fact? I mean by that, is it or is it not your understanding that there had been actual, accurate field examination made for the purpose of those withdrawals between the restoration and the withdrawal?

Mr. NEWELL. No; I do not know of any examination or introduction of any facts which we did not have in the Reclamation Service. And between the time of restoring and rewithdrawing I question very seriously whether there was any additional information available. In fact, I think they had less information in one sense, because the rewithdrawals were made by men who were not as personally familiar with the West and with the power sites as were Mr. Davis, myself, and other engineers who had been on the ground.

The CHAIRMAN. Now, Mr. Newell, when did your Reclamation Service become segregated from the Geological Survey and made independent of it?

Mr. NEWELL. In March, 1907, when I became director, the connection practically ceased.

The CHAIRMAN. Well, now, at that time Mr. Davis went over with you in the Reclamation Service?

Mr. NEWELL. He was with me; yes, sir.

The CHAIRMAN. You stated a moment ago that you had, when you went over into that service, all the data that they had in the Geological Survey?

Mr. NEWELL. Practically.

The CHAIRMAN. But did you continue after that to get the work of the Geological Survey subsequent to that transfer of your bureau?

Mr. NEWELL. Everything that related to the western conditions and subsequent to that, also, it may be stated that the appropriations were very greatly cut down, so that the amount of information since 1907 has been relatively far less per annum than previous to that time.

The CHAIRMAN. Well, the point is this, Mr. Newell: Did not the Geological Survey continue with their operations to make a survey, a topographic survey?

Mr. NEWELL. They continued, but on a very greatly reduced scale.

The CHAIRMAN. And that was independent of your bureau, that work?

Mr. NEWELL. Yes, sir.

The CHAIRMAN. I mean they continued with the topographic and hydrographic surveys?

Mr. NEWELL. Yes, sir. But I want to emphasize the fact that the hydrographic work was practically confined to the same localities which we had previously examined, because the appropriation was so small they could not take up new localities. It was a matter of simply holding the work where it was.

Senator FLETCHER. This statement refers to actual field examination. I understand that means that the men actually went on the ground and made these investigations and surveys, and that the restorations are based upon those. Now, would you have known whether the men from the Geological Survey were in the field, on the ground, making these examinations, or not?

Mr. NEWELL. The probability is that I would, because I am so much interested in all that western work that, officially or unofficially, I would know of the fact that the boys were in the field.

Mr. PEPPER. Now, Mr. Newell, on page 83 of Senate document there is a letter of September 3, from George Otis Smith, director, the Secretary of the Interior, in which, at the bottom of page 83 and top of page 84, he writes thus [reading]:

Following the withdrawal the survey sends into the field experts to make careful topographic and hydrologic surveys, including additional stream profiles and measurements of stream flow, and on this basis reviews the withdrawals made and recommends restoration of tracts not essential to power development. As a result of such special examinations three restorations of areas, in no wise essential to the control of river development, have already been made and the existence of valuable power has undoubtedly in the possession of the Government has been conclusively demonstrated.

All the withdrawals will be specially examined in the field before Congress convenes.

Is that an accurate statement, as you understand it, of the way in which the Geological Survey did proceed in this matter?

Mr. NEWELL. As I understand it, that is a statement of what they hoped to do, rather than what they actually had done.

Mr. PEPPER. And in speaking here as he does of the withdrawal the survey following the withdrawal," you understand that to be in accordance with the facts; that is, that they first withdrew and then made their examinations?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. And how far is that in accord with the plan which had originally been worked out by the service and Secretary Garfield?

Mr. NEWELL. That is substantially the idea, that the withdrawals would be made early and broad, because of the fact that when the surveyors appeared in the field public interest is stimulated, and if the land is not withdrawn, it will be taken up simply as a matter of regulation.

Mr. PEPPER. Did you make any statement of your position in this matter on or about July 10, in a letter to Senator La Follette? I and you what purports to be a copy of such letter. [Counsel hands letter to witness.]

The CHAIRMAN. Give the page, please.

Mr. PEPPER. It appears at page 1900 of the testimony.

Mr. NEWELL. Yes; the letter printed on page 1900 is a statement made by myself on July 10.

Mr. PEPPER. You begin by saying [reading]:

Replying to your inquiry regarding the restoration of water-power sites, I think, on your information, it only fair to set myself right against the charge of inconsistency.

What is the charge of inconsistency to which you referred?

Mr. NEWELL. Knowing that I had been a keen advocate of withdrawal, some of my friends thought I had gone back on that policy in making restorations so broadly, and I tried to explain the fact that I was not concerned in it.

Mr. PEPPER. At the bottom of page 1189 of the testimony, there is, in the course of the President's letter to Secretary Ballinger of September 13, a paragraph which reads thus [reading]:

Soon after you became Secretary of the Interior you brought this order to my attention and said that it included a great deal of land that had no water-power sites on it, running back many miles from the rivers, and that it included much land which

ought to be opened to public settlement; that you had applied to the Reclamation Bureau to know whether it was desired for reclamation purposes, and what their recommendation was in the premises, and that they recommended that it be returned to the public domain.

As far as you are concerned, is that a correct statement of your attitude in this matter and the part that you took in it?

Mr. NEWELL. No; that is not my idea.

Mr. PEPPER. Well, is that essentially correct or incorrect?

Mr. NEWELL. So far as it applies to me, it is not.

Mr. PEPPER. It is not what?

Mr. NEWELL. It is not correct. 'I never recommended any restoration.

Mr. PEPPER. And had you, in fact, protested to the Secretary in the way that you have described?

Mr. NEWELL. I had, during the month of March.

Mr. PEPPER. Now, Mr. Newell, in Mr. Pinchot's letter of November 4, to the President, which, so far as it touches the reclamation matters, appears on page 1226 of the testimony, he uses this language [reading]:

Under Mr. F. H. Newell, as director, the United States Reclamation Service has become an organization of exceptional efficiency. It contains many engineers of high character and standing, who are engaged on its projects at a fraction of what they could earn elsewhere. During the spring I became greatly concerned because it was coming to be generally believed in the Reclamation Service that the director had lost the support of Secretary Ballinger. Some of the best engineers were resigning and others were considering the same step. The situation demanded prompt action. Accordingly, in the hope of preventing further loss to one of the most important branches of practical conservation, I laid the matter before you. You assured me that the Reclamation Service would be protected. No one can doubt your own purpose in this matter. Yet I recognize with regret that the unfortunate situation to which I called your attention still exists. If it is allowed to continue, the Reclamation Service must inevitably disintegrate.

Aside from the personal reference to yourself and aside from the statement of the interview of Mr. Pinchot with the President, which I assume you have no personal knowledge of, is that substantially a correct or incorrect statement of the situation?

Mr. NEWELL. That is a substantially correct statement of the condition of the Reclamation Service.

Mr. PEPPER. As of the date of that letter, or at the present time, or both—that is, November 4?

Mr. NEWELL. Practically both; yes, sir.

Mr. PEPPER. When Mr. Ballinger comes to reply to your letter, in his letter of November 15 to the President—and the part that I refer to appears on page 1260 of the testimony—he says [reading]:

The statement that the Reclamation Service had lost the support of the Secretary without foundation, as is also the further statement that it is in danger of disintegration through any act of commission or omission on my part. The law lays upon the head of the Interior Department great responsibilities in its administration in reclamation matters. To say that efforts to become familiar with the operations of the service and to intelligently carry out the duties incident to that administration will accomplish disintegration, is entirely unwarranted and involves the assumption that the conduct of the reclamation officers can not stand scrutiny or supervision. As none of said officers have ever intimated any such idea to me, and it is unfair to assume that they are so regardless of their obligations to their responsible head as to secretly indulge in criticism to an officer who has no legal or other right to interfere in their affairs, it is reasonable to believe that the criticism made is based on idle gossip, to which no unprejudiced person, devoid of anxiety to condemn without a hearing, would have paid any heed.

Now, Mr. Newell, when questions had arisen in your mind respecting the course of the Secretary to the service, did you go to him with them—had you previous to that time gone to him and frankly discussed them with him?

Mr. NEWELL. I had attempted at all times, beginning with our interview of March 18, to call his attention to these unfortunate conditions.

Mr. PEPPER. Well, had there been frank talks between you men prior to this time respecting the conditions in the service?

Mr. NEWELL. So far as I am concerned I attempted to be perfectly frank, and describe to him what I regarded as very unfortunate conditions, which would undoubtedly lead to disintegration if he did not take some steps to improve those conditions.

Mr. PEPPER. What I want to know particularly is, whether there had been secret criticism of him in the sense that you talked to others without going to him in the matter?

Mr. NEWELL. No; there is nothing of that kind. I have talked to others; I talked to the members of the Senate committee, telling them in a reserved way of the conditions as they existed, but I do not think should call it in any sense a secret criticism.

Mr. PEPPER. Had you in point of fact talked frankly and man-to-man to the Secretary on those subjects?

Mr. NEWELL. I attempted to.

Mr. PEPPER. Did you in point of fact have interviews with him during the summer?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. And what passed at those interviews?

Mr. NEWELL. He invariably replied, "That is my affair; I am responsible for these matters."

Mr. PEPPER. What matters was he referring to?

Mr. NEWELL. To any of these unfortunate conditions which I alluded to him.

Mr. PEPPER. What, for example?

Mr. NEWELL. Well, the newspapers' criticisms, and the taking up of matters with our men without making a definite record of the fact or discussing the matter with the director or the acting director.

Mr. PEPPER. And when you speak of newspaper criticisms, are you able to state whether or not the cuttings that I hand you from the Seattle Post-Intelligencer, the Denver Republican, the Oregonian, and the Boise Statesman and the Bonanza Bulletin, the Seattle Times, and the Tacoma Ledger, are among the published criticisms of your service, and of you particularly that you refer to?

Mr. NEWELL. Yes, and the statements which have already appeared in the record, and particularly to one to which we referred here in the Denver Republican.

Mr. PEPPER. Now what, if anything, did he—if you will hand those to Mr. Vertrees; I want to put those in at this point.

The CHAIRMAN. Are not some of those the articles that have already been put in?

Mr. PEPPER. I have tried, Mr. Chairman, to make a distinction; I do not think that there are any of them in the record. I am going to hand them to Mr. Vertrees.

Senator ROOR. I do not think you have gotten an answer to your question.

Mr. PEPPER. Will you please answer the question that I asked you. Mr. Newell?

Mr. NEWELL. I beg your pardon. Will you repeat the question?

Mr. PEPPER. The question was, whether the cuttings that I hand you are the utterances that you referred to when you spoke to the Secretary?

Mr. NEWELL. Yes; I had those in mind and called his attention specifically to the fact that they were being prepared by men who were presumably in rather close touch with him.

Mr. PEPPER. And what, if anything, was said?

Mr. NEWELL. He simply replied that he was responsible for anything of that kind personally.

Mr. PEPPER. When you stated that, you did not mean that he said he was responsible for those newspaper accounts?

Mr. NEWELL. No; he was responsible for the general conduct of affairs; that was his duty or prerogative. The point I tried to make was that, as responsible head, it was his duty to protect the men under him, as they were not in position to protect themselves from newspaper attacks; and his statement was to the effect that it was a matter for him to determine.

The CHAIRMAN. Do you offer those cuttings in evidence?

Mr. PEPPER. Yes, sir.

The CHAIRMAN. Is there any objection, Mr. Vertrees?

Mr. VERTREES. No, sir.

The CHAIRMAN. They are admitted.

(The newspaper clippings are as follows:)

[Seattle Post-Intelligencer, May 16, 1909.]

MR. BALLINGER TO ENFORCE THE LAW—SECRETARY OF THE INTERIOR FINDS SLACK METHODS IN THE PUBLIC SERVICE—FALSE REPORTS SPREAD—NO FOUNDATION FOR STORY THAT CABINET MEMBER HAS DIFFERENCE WITH PRESIDENT.

WASHINGTON, May 10 (Special).—The false report which has been published in Seattle and elsewhere that Mr. Ballinger, the new Secretary of the Interior, has had a serious difference of opinion with President Taft has no foundation in fact. The report, however, did grow out of an interesting state of affairs connected with the administration of the public land laws, the forestry law, and other statutes of vital interest to the far West. The fact is that Secretary Ballinger, in the short weeks since he began his administration, has turned certain policies in the Interior Department upside down. In so doing he has encountered the opposition of Gifford Pinchot, the Forester, who was for a time mildly supported by Secretary of Agriculture James Wilson, and he has run afoul of that interesting body of citizens identified in the popular mind with what is known, for short, as the "uplift."

The new Secretary of the Interior has found that the Forest Service and the Reclamation Service during the last few years have been doing a good many things without any warrant of law, and Mr. Ballinger entertains the old-fashioned notion that the United States Government is a government of law and that things should be done in strict conformity with the letter and the spirit of the statutes.

MUTTERINGS OF STORM.

The first mutterings of the storm caused by the introduction of lawful methods of administration by Secretary Ballinger were heard when he questioned the withdrawal of large areas of public land by the Forest Service for what are known as "administrative sites."

"Administrative sites" is a beautiful phrase which, when emanating from the lips of a forestry expert or an exponent of the "uplift," has a sound pleasing to the ear but nobody seems to know just what it means. As nearly as can be ascertained, the withdrawal of lands for the purpose vaguely described by this charming phrase has for its ostensible object the creation of a place upon which the Forest Service may establish ranger stations and provide other facilities for the administration of the

national forest reservations. This object, of course, would make it seem reasonable that the withdrawals in question should be within the present reserves, but it is a matter of record that thousands of acres have been withdrawn at the instance of the Forest Service outside the national forests, and yet they are called "administrative sites," and are presumably to be used in connection with the administration of the reserves. Where these peculiar withdrawals are made within the boundaries of present national forests one is led to question the necessity of such withdrawals, since the land has already been withdrawn, and is subject to all the restrictions and safeguards which are provided by the national forest service laws.

SUBTERFUGE OF SERVICE.

An inquiry into this matter does not proceed very far, however, before it is found that the withdrawals for the purpose described as "administrative sites" are really a subterfuge of the Forest Service. Several years ago Congress enacted a law prohibiting the withdrawal in certain States of any more lands for forest reservation purposes, except under direct authority of Congress. These States are six in number—Colorado, Idaho, Montana, Oregon, Washington, and Wyoming. It is interesting and significant to learn—indicative, it is believed, of the modern practice of personal government—that former Secretary of the Interior Garfield, at the instance of the Forest Service, withdrew, in the six States mentioned, a total of more than 9,000 acres of land outside of forest reserves. These tracts were described as "administrative sites." Of course, these withdrawals had no warrant of law: on the contrary, they were in direct contravention of the statute which prohibited further withdrawals of lands for forestry purposes in the six States named.

When Secretary Ballinger came into office he found that the withdrawals of lands under the clever subterfuge of "administrative sites," and of water-power sites, amounted to probably not less than 700,000 acres. These withdrawals had been made without any authority of law whatever. Being regardless of his oath of office to administer the laws faithfully, he directed that these great areas be restored to entry. This was horrifying to all the "uplifters," and to all those so-called conservatives who seemed to believe not only in conservation but in absolute stagnation of development. It may be said, however, that new withdrawals will be made in the near future, and some have already been made, but they will be made only after an examination as to the merits of the proposed withdrawals. The following may be taken as a fair statement of the situation as far as the withdrawals for forestry purposes are concerned:

Withdrawals for forestry purposes are made by the Secretary of the Interior upon the recommendation of the Secretary of Agriculture, either for temporary or permanent use in certain States and Territories, and are likewise revoked and the lands restored to the public domain. The reasons for revocation of such withdrawals are that the lands are no longer needed for forestry purposes.

TO BE EXAMINED.

Some time ago certain lands in Utah, Colorado, and Wyoming, alleged to contain valuable deposits of phosphate, were withdrawn. This withdrawal is still effective, except as to a very small portion, which from examination by the Geological Survey has been found to be not valuable for the purposes for which withdrawn. The lands remaining withdrawn will be subjected to a careful field examination, as the result of which they will be classified in accordance with the general scheme followed in classifying coal lands.

The fact that the withdrawal of land for these so-called "administrative sites" is illegal is easily proved by reference to the acts of Congress approved June 4, 1897, and subsequent enactments. It has been said that Secretary of Agriculture Wilson was standing behind Forester Pinchot in his opposition to Secretary Ballinger's orders respecting the restoration of lands withdrawn in the restricted States and other States for administrative sites. The fact is that at present there is no difference whatever between Secretary Wilson and Secretary Ballinger, and the latter has the cordial support of President Taft.

WITHOUT LEGAL WARRANT.

The Secretary of the Interior holds that the laws already referred to expressly declare that lands within forest reservations shall continue subject to bona fide exploration and acquisition by qualified persons under the mineral land laws. He holds that such withdrawals as were made by a former administration at the instance of Forester Pinchot have had the effect of suspending the operation of these laws as

to the land affected by the order, and his opinion is that in the absence of additional legislative authority these withdrawals have been made entirely without legal warrant. Secretary Ballinger believes that as nonmineral land within national forests can not be acquired under any laws of the United States it is unnecessary to have a sort of double-barreled, iron-clad, and copper-riveted withdrawal on top of another for any such purpose as is described in the attractive phrase, "administrative sites." He sees no reason why these administrative sites should not be selected within the reserves and on nonmineral bearing ground.

Here is a list of withdrawals that have been made for administrative sites, outside of national forests, and which Secretary Ballinger declares are probably unnecessary in any State, and certainly illegal in six of the States, where Congress has prohibited any further withdrawals for forestry purposes: Arizona, 1,400 acres; California, 600; Colorado, 3,413; Idaho, 1,517; Montana, 2,449; Nevada, 305; New Mexico, 1,115; Oregon, 191; South Dakota, 400; Utah, 230; Washington, 320; Wyoming, 1,250. The following is a letter which Secretary Ballinger wrote to a citizen of Des Moines, Iowa who had written to him deploring what was reported as being a reactionary administration in the Interior Department in respect to the forest reserves and the conservation movement generally:

"Permit me to acknowledge the receipt of your letter of May 23 and to thank you for the courtesy of inclosing a newspaper article. There is not the slightest intention of reversing the policy of public utilities of the West. There has been no change whatever in the policy of conserving the coal, timber, and phosphate lands, with the power and other public utilities on the public domain, and Congress will be asked at the next session to furnish needed additional legislation to give the administrative power to carry out lawfully these policies."

WALTER E. CLARK

[Denver Republican, May 20, 1909.]

VIVIAN CONTINUES AS STATE CHAIRMAN.

WASHINGTON, May 19 (*Special*).—Senator Guggenheim, with the authority of the Secretary of the Interior, has offered State Chairman John F. Vivian a position as chief of bureau which is to be created in the Reclamation Service, to take charge of colonizing the various government irrigation projects as they are completed and are thrown open for the use of settlers.

A considerable force of agents and employees will be connected with the bureau which will assume the general duties of the Reclamation Service in all matters relating to settling up the lands irrigated by the Government. The headquarters of the bureau will be established in this city, and if Mr. Vivian accepts the position the organization of the bureau will be arranged for immediately.

[Portland (Oreg.) Oregonian, June 16, 1909.]

PICK SEATTLE MAN—BALLINGER WANTS R. H. THOMSON IN RECLAMATION WORK—MAY SUCCEED F. H. NEWELL—SOME DOUBT AS TO WHETHER CITY ENGINEER WILL TAKE PLACE, BUT OPPORTUNITY WILL BE OFFERED THIS FALL.

OREGONIAN NEWS BUREAU, Washington, June 15.—R. H. Thomson, city engineer of Seattle, is the man Secretary Ballinger has in mind for appointment as Director of the Reclamation Service in the event that F. H. Newell is retired from that office. It is not known that Thomson would accept the appointment; in fact, there is considerable doubt about it, but Ballinger would like to appoint him, and it is understood that the place will be tendered him as soon as a definite decision is reached with reference to Newell. As heretofore stated, it is not proposed to make this change until fall.

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[Statesman, Boise, July 2, 1909.]

BALLINGER GOES OUT IF NEWELL STAYS IN—PROGNOSTICATION: THERE WILL SOON BE A NEW HEAD FOR RECLAMATION SERVICE—SECRETARY SAYS LAW HAS PUT SHUNTED TO REAR—TOO MANY DEPARTMENTAL ORDERS AND SATELLITE ORGANIZATIONS THAT THE STATUTE DOES NOT AUTHORIZE—ALSO THERE'S AN IMPRESSION THAT MACHINE POLITICS HAS BEEN TOO LIBERALLY DRAWN ON.

STATESMAN BUREAU, Washington, July 1.—If President Taft lends his approval Secretary Ballinger will completely reorganize the United States Reclamation Service during the coming fall and winter. Not only will Director Newell give way to some man chosen by Secretary Ballinger, but other officials of the service will be let out or transferred to make way for men in whom the Secretary reposes full confidence.

It is the purpose of Secretary Ballinger during the summer months to work out his plan for reorganizing the Reclamation Service. This will include the selection of new men for the higher positions. If this can be done before the Secretary returns to Washington in September, a new order of things can be inaugurated and put into operation before Congress reconvenes.

As has heretofore been stated in these dispatches, Secretary Ballinger would like to appoint R. H. Thomson, city engineer of Seattle, as director of the Reclamation Service. It is known that he has written to Mr. Thomson asking if he will accept the appointment, but Mr. Thomson's decision, if he has reached one, has not become known. It is probable that he will allow the matter to rest until he can talk it over with Secretary Ballinger when the latter arrives in Seattle about July 12. If for any reason Mr. Thomson turns down the offer search for some other man will be made immediately.

CHARGE LAX OBSERVANCE OF LAW.

Much of Secretary Ballinger's criticism of the management of the Reclamation Service is based upon the fact that the officials in charge have not strictly adhered to the letter of the law. This is not altogether due to the reclamation officials, however, for it was the creed of former Secretary Garfield that he and the officers of his department could do anything which was not specifically forbidden by law—that is, anything connected with their legitimate work. In Garfield's day regulations were made both by the Reclamation Service and other branches of the Interior Department, which had the effect of law but which were not specifically sanctioned by law. So it was in the Reclamation Service. It was Garfield's policy and naturally it became the policy of the Reclamation Service.

Already Secretary Ballinger has upset some of the practices and regulations that were the outgrowth of the Garfield policy. He no longer permits the Reclamation Service to enter into contracts with water users' associations for the construction of parts of irrigation projects; he has forbidden the issuance of further "scrip" by water users' associations in payment for such work.

LEGALITY OF THE ASSOCIATIONS.

Now he questions the legality of water users' associations. He finds no provision in the reclamation act authorizing the creation of these associations on the basis upon which they have been organized heretofore. The reclamation act contains this clause:

"When the payments required by this act are made for a major portion of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior."

This is the only sort of water users' association provided for in the reclamation act, and Secretary Ballinger has been unable to reconcile the associations heretofore built up, particularly those on unfinished projects, with the sanction of the present heads of the reclamation service. It is understood that the abolition of premature water users' associations may follow when the reorganization of the service takes place, if not beforehand, if Ballinger has his way.

BEEN ON THE IN-BAD LIST.

It is not charged that the various acts of the Reclamation Service have caused the Government loss of money or have resulted in corruption or wrong-doing, but that is not the point. These various acts have not been sanctioned by law, and Secretary Ballinger differs from his predecessor in that he holds his powers are fixed by law, and that it is neither his function nor his privilege to go beyond the law. For these

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excesses, it is understood, the Secretary in no small degree blames Morris Bien, the legal adviser of the Reclamation Service, and Bien is one of the officials slated to go with Newell. While his successor has not definitely been chosen, it is known that A. C. Campbell, now an attorney in the Department of Justice, and a man of large practical experience with irrigation and public-land legal problems, is under consideration for the place. Campbell hails from New Mexico. He is well and widely known as a lawyer, especially equipped for work such as this, and his selection is not regarded as improbable. But, like others, his appointment is not looked for until the general overhauling begins in the fall.

How many other officials are slated for removal or transfer is not known. Nor is it known how the service will be affected by the modifications contemplated by Secretary Ballinger. It has been rumored in Washington that if Mr. Newell is forced out of the service some of his subordinate engineers will leave with him.

The charge has gone out that the effort is being made to convert the Reclamation Service into a political machine, providing offices for politicians rather than engineers. Secretary Ballinger, however, maintains that his reorganization is intended to transform the Reclamation Service into a practical business organization, operating along strictly legal lines, for the promotion of public business with expedition and economy.

There may be an effort made to prevent the carrying out of the reforms proposed by Secretary Ballinger; indeed, it is only natural that friends and supporters of Director Newell should interpose objections to the Ballinger programme. However, Judge Ballinger, like other Cabinet officers, has been given to understand that he is the actual head of the entire Interior Department, charged with the administration of the affairs of all its bureaus, and if the President should deny him the right to work reforms in the Reclamation Service when he believed those reforms were necessary, he would be very quick to tender his resignation.

[Bonanza (Oreg.) Bulletin, July 8, 1909.]

WILL REORGANIZE IRRIGATION WORK—BALLINGER TO CHANGE MANY OFFICIALS AND ADHERE STRICTLY TO LAW—HOPES TO GET THOMPSON—SEATTLE MAN MAY SUCCEED NEWELL, AND CAMPBELL, OF NEW MEXICO, IS SLATED FOR LEGAL ADVISER—OTHER CHANGES NEAR.

If President Taft lends his approval, Secretary Ballinger will completely reorganize the United States Reclamation Service during the coming fall and winter, and indications are that the President will sanction whatever reforms Mr. Ballinger desires to inaugurate. Not only will Director Newell give way to some man chosen by Mr. Ballinger, but other officials will be let out or transferred.

It is the purpose of Mr. Ballinger during the summer to work out his plan for reorganizing the Reclamation Service. This will include the selection of new men for the higher positions. If this can be done before he returns to Washington in September, a new order of things can be inaugurated and put into operation before Congress reconvenes.

As has heretofore been stated, Mr. Ballinger would like to appoint R. H. Thompson, city engineer of Seattle, as Director of the Reclamation Service. It is known that he has written to Mr. Thompson asking if he will accept the appointment, but Mr. Thompson's decision, if he has reached one, has not become known. It is probable that he will allow the matter to rest until he can talk it over with Mr. Ballinger when the latter arrives in Seattle about July 12. If Mr. Thompson declines, search for some other man will be made immediately.

Much of Mr. Ballinger's criticism of the management of the Reclamation Service is based upon the fact that the officials in charge have not strictly adhered to the letter and intent of the law. This is not altogether due to the reclamation officials, for Secretary Garfield held that he and the officers of his department could do anything connected with their work which was not specifically forbidden by law. In Mr. Garfield's day regulations were made, both by the Reclamation Service and other branches of the Interior Department, which had the effect of law, but which were not sanctioned by law.

Already, Mr. Ballinger has upset some of the practices and regulations that were the outgrowth of the Garfield policy. He no longer permits the Reclamation Service to enter into contracts with water users' associations for the construction of parts of irrigation projects; he has forbidden the issuance of further "script" by water users' associations in payment for such work. Now he questions the legality of water users' associations. He finds no provision in the reclamation act authorizing them

creation on the basis upon which they have been organized heretofore. The reclamation act contains this clause:

"When the payments required by this act are made for a major portion of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior."

This is the only sort of water users' association provided for in the reclamation act, and Mr. Ballinger has been unable to reconcile the associations heretofore built up, particularly those of unfinished projects, with the sanction of the present heads of the Reclamation Service. It is understood that the abolition of premature water users' associations may follow when the reorganization of the service takes place, if not beforehand.

It is not charged that the various acts of the Reclamation Service have caused the Government loss of money, or have resulted in corruption or wrongdoing, but they have not been sanctioned by law, and Mr. Ballinger holds his powers are fixed by law, and that it is neither his function nor his privilege to go beyond the law. For these excesses, it is understood, the Secretary in no small degree blames Morris Bien, the legal adviser of the Reclamation Service, and Mr. Bien is one of the officials slated to go with Mr. Newell. While his successor has not definitely been chosen, it is known that A. C. Campbell, now an attorney in the Department of Justice, and a man of large practical experience with irrigation and public-land problems, is under consideration for the place. Mr. Campbell hails from New Mexico. He is well and widely known as a lawyer especially equipped for such work as this, but his appointment is not looked for until the general overhauling begins in the fall.

How many other officials are slated for removal or transfer is not known. Nor is it known how the service will be affected by the modifications contemplated by Mr. Ballinger. It has been rumored in Washington that if Mr. Newell is forced out of the service, some of his subordinate engineers will leave with him. The charge has gone out that the effort is being made to convert the Reclamation Service into a political machine, providing offices for politicians rather than engineers. Mr. Ballinger, however, maintains that his reorganization is intended to transform the Reclamation Service into a practical business organization, operating along strictly legal lines, for the promotion of public business with expedition and economy. There may be an effort to prevent the carrying out of the reforms proposed by Mr. Ballinger; indeed, it is only natural that friends and supporters of Mr. Newell should interpose objections to the Ballinger programme. However, Mr. Ballinger, like other Cabinet officers, has been given to understand that he is the actual head of the entire Interior Department, charged with the administration of the affairs of all its bureaus, and if the President should deny him the right to work reforms in the Reclamation Service when he believed those reforms were necessary he would be very quick to tender his resignation. It is, therefore, very probable that the Ballinger programme will be carried through on schedule time.—(Oregonian).

[Seattle Times, July 10, 1909.]

SALARY SAME IN JOB OFFERED THOMSON --AS CITY ENGINEER OF SEATTLE HE RECEIVES \$7,500, AMOUNT PAID TO DIRECTOR OF RECLAMATION SERVICE-- MAYOR MILLER SAYS IT MEANS PROMOTION--DOES NOT KNOW OFFICIALLY OF TENDER, BUT DECLARES OFFICIAL WOULD BE WISE TO GIVE IT CONSIDERATION.

If Reginald H. Thomson, city engineer of Seattle, accepts a position under Secretary of Interior R. A. Ballinger it will be that of Director of the Reclamation Service, which carries with it a salary of \$7,500 per annum, exactly what he receives from the city of Seattle. F. H. Newell now holds the job.

Attaches of the engineer's office, in the absence of Thomson yesterday, said that the matter had never been discussed with their chief, and the possibility of his leaving Seattle to accept a government position had not been intimated in any discussions relative to the work of the department.

"Mr. Thomson has never intimated to me that the appointment had been tendered to him," Chief Clerk A. F. Paddock said, "and I doubt very much if he would care to make a change at this time, particularly when the salary is no larger than he is now paid by the city."

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"The only thing I know about the possibility of Engineer Thomson leaving the city's service was the statement in The Times," Mayor Miller said. "I should like to know that if the position is what I presume it is, that Mr. Thomson would be very glad to consider it in case it is tendered to him. I have had no conversation with him and I do not know that the place has been offered to him. Should it be, I should regard it as a promotion and the selection of a man who is particularly well fitted for the position."

[Seattle Post-Intelligencer, July 14, 1906.]

NO QUARREL WITH SECRETARY WILSON—R. A. BALLINGER SAYS HE DIFFERS FROM VIEWS OF GIFFORD PINCHOT—WANTS LAW OBSERVED—SAYS TARIFF BILL WILL BE FAIRLY WELL, THOUGH NOT QUITE ALL EXPECTED.

"The idea seems to have gone forth that I have clashed with Secretary of Agriculture Wilson over the forest reserves, but such is not the case. I have no quarrel with Secretary Wilson. My views and those of Gifford Pinchot, head of the Forestry Bureau, which is a part of the Department of Agriculture, diverged in the matter of forest reserves. I maintained that the law should be enforced, and it is now up to the Attorney-General for a decision," declared R. A. Ballinger, Secretary of the Interior, at his home last night.

"The Department of the Interior has charge of all public lands, and does not intend that the Forestry Bureau, a part of another department, shall run the Department of the Interior.

"By act of Congress forest reserves are open for mineral exploration and exploitation. Mr. Pinchot set aside certain sections of forest reserves, which he called administrative sites and rangers' posts. He resolutely refused to allow these to be opened to mineral exploitation. Among his reasons was a laudable one to the effect that some of the mineral sites might have also valuable water-power advantages. I maintain that the law of Congress, which throws public lands open for mineral exploitation, applies to these so-called administrative sites whether or not they have water-power advantages. I do not think that Mr. Pinchot was acting within the law in closing such sections of the reserves. These are the facts of the differences between the Department of the Interior and the Forestry Bureau.

ALASKAN POLICY.

"The department has geologists up in Alaska who will be a very important factor in the development of this part of the country. My department has a great deal to do with its development. Members of the Geological Survey now in Alaska have been strictly enjoined to make reports for base-line surveys, or meridian lines as they are also called. Their reports are to indicate a method for the working out of the base-line surveys in Alaska. The department, at the next session of Congress, will recommend the necessity for a special appropriation to make base-line surveys in Alaska. The geologists are also to report on the agricultural possibilities of Alaska. For, to my mind, the department should and will recommend the opening up to the public of those areas in Alaska which are found feasible for agricultural development.

"I have not considered making a change in the Director of the Reclamation Service. The present head, F. H. Newell, was with the service while connected with the Geological Survey and his work is satisfactory. I see no reason for a change at the time, but what might happen in the future I can not say. If there was to be a change made, it would not be made until I returned to Washington. I am to be out here until the latter part of September.

MET ENGINEER THOMSON.

"I met R. H. Thomson, city engineer, to-day, and spoke to him only casually. I did not offer him the directorship of the Reclamation Service and have not talked the matter over with him.

"I stopped in Nebraska, Wyoming, and Montana on my way out. I saw new evidences of great activity in those States. The sheepmen are getting higher prices for wool. Agricultural prospects are bright with good prices in view.

"Conditions in the East are rapidly improving. There is a buoyant feeling prevalent and confidence in the future is indicated generally. I believe that within the next year the country will experience the greatest commercial activity it has ever had.

"I believe that the tariff bill will be disposed of shortly. The conference committee will not be in session long. The result will not be as much of a revision downward

as was expected or as may have been desired by the people and the administration. However, with the revival of business activity, which I believe will come, I doubt if there will be any general dissatisfaction with the treatment of the tariff.

"I will start in a few days to look over the various reclamation projects and will return to Seattle for a few days' rest two or three times during the summer."

Members of the committee representing the irrigation congress, of Washington, Oregon, and Idaho will meet with Secretary Ballinger this morning in the land office. The chairman of the committee is George W. Hayes, of Vale, Oreg. The Malheur-Snake River project will be discussed in detail.

[Ledger, Tacoma, Wash., July 14, 1909.]

**BALLINGER HOLDS PINCHOT IN CHECK—FORESTER CAN NOT RUN HIS DEPARTMENT—
SECRETARY OF INTERIOR DENIES THAT HE CLASHED WITH WILSON—EXPLAINS
CONSERVATION POLICY.**

SEATTLE, *July 13.*—"The idea seems to have gone forth that I have clashed with Secretary of Agriculture Wilson over the forest reserves, but such is not the case. I have no quarrel with Secretary Wilson. My views and those of Gifford Pinchot, head of the Forestry Bureau, which is a part of the Department of Agriculture, diverged in the matter of forest reserves. I maintained that the law should be enforced, and it is now up to the Attorney-General for a decision," declared R. A. Ballinger, Secretary of the Interior, in an interview to-night.

"The Department of the Interior has charge of all public lands and does not intend that the Forestry Bureau, a part of another department, shall run the Department of the Interior.

REFUSED TO OBEY LAW.

"By act of Congress, forest reserves are open for mineral exploration and exploitation. Mr. Pinchot set aside certain sections of forest reserves which he called administrative sites and rangers' posts. He absolutely refused to allow these to be opened to mineral exploitation. Among his reasons was a laudable one to the effect that some of the mineral sites might have also valuable water-power advantages. I maintain that the law of Congress, which throws public lands open for mineral exploitation, applies to these so-called administrative sites whether or not they have water-power advantages. I do not think that Mr. Pinchot was acting within the law in closing such sections of the reserves. These are the facts of the differences between the Department of the Interior and the Forestry Bureau."

ROOSEVELT POLICY FOLLOWED.

Secretary Ballinger said that the policy of conservation instituted by President Roosevelt was being followed faithfully by the Taft administration.

"Regarding the conservation of water power," said Secretary Ballinger, "my department is continually withdrawing under temporary withdrawals all available water-power sites located on public domain in order to report to the next Congress and recommend additional legislation.

"The Geological Survey has been very active in this particular, and under my direction has segregated in the neighborhood of 200,000,000 acres of land for this purpose. There is greater activity in the field force of the General Land Office than at any other time in the history of the department, owing partially to the fact that the last Congress doubled the appropriation for field investigation. With this force existing conditions will be cleaned up as fully as is possible.

"The President has sent me out into the West that I might become fully acquainted with the necessities of the Reclamation Service," he continued, "and be able to make such modifications in its administration as may be necessary to progress the work and keep it within the legitimate scope of the law, and also to report the facts to him."

Senator FLINT. What do you mean by the statement that these men were in close touch with him? What do you refer to?

Mr. NEWELL. I refer particularly to Breckons, who was the correspondent of the Denver Republican, and to the other correspondents writing for these particular papers.

Senator SUTHERLAND. Mr. Pepper, let me understand about this matter. Are you putting in all those clippings from the newspapers throughout the country, and do you seek to hold Secretary Ballinger responsible for these utterances?

Mr. PEPPER. No; I do not know what inference ought to be drawn from them. All that I am trying to do is, when it appears from the witness that the conversation occurred between him and the Secretary in which the fact of certain publications was brought by Mr. Newell to the attention of the Secretary, to produce those things which, in fact, Mr. Newell then had in mind in so speaking to the Secretary.

Senator ROOT. Do I understand that these articles were brought to the attention of the Secretary of the Interior in that conversation, or were merely in Mr. Newell's mind?

Mr. PEPPER. I will ask you, Mr. Newell, particularly whether you did draw the attention of the Secretary to the newspaper utterances which you had in mind, and if so, how specifically? In other words, give the thing as nearly as you can, just as it occurred.

Mr. NEWELL. I did not hand him the specific clippings or refer to them by dates, but it was well understood that there were these attacks coming out, and that it was essential that we be protected from such attacks. I did not hand him the particular clippings, but it was generally understood that there were a series of attacks being made.

Mr. GRAHAM. From your conversation with him, are you prepared to state whether he had personal knowledge of these communications or not?

Mr. NEWELL. I can not state that.

Mr. GRAHAM. Is it the intention to call in the writers of these articles as to whether they obtained their information from the Secretary?

Mr. PEPPER. I do not think we are in position to do that, Mr. Graham. All that I can do is to make as definitely as it is possible for me to do, the conversation that actually took place between Mr. Newell and the Secretary, by producing any document or documents which Mr. Newell referred to or intended to refer to, and to have him state frankly just how specifically he referred to it. I do not know what inference the committee would draw from such facts.

Mr. GRAHAM. Unless it appears that the Secretary's mind and his mind met on these particular communications, we could not draw very much of an inference from them.

Mr. PEPPER. I think that is true. The only thing in that view of it which could be said with respect to these matters is that the public utterances against the Reclamation Service were facts, and that these utterances were the inducing causes of protest to the Secretary, which called forth from the Secretary the statement that Mr. Newell has narrated.

The CHAIRMAN. Mr. Newell, do I understand that you invoked the Secretary's aid to protect your bureau against the newspaper criticisms?

Mr. NEWELL. I called his attention to the fact that it would demoralize, and was demoralizing the men, and tried to make plain that a man in his position had the power to stop them, or at least to assure the men that they did not have a substantial foundation.

The CHAIRMAN. Did you not know, Mr. Newell, that the Secretary was powerless to protect himself against newspaper criticisms; and how could he have greater power to protect your bureau than he could to protect himself?

Mr. NEWELL. He could protect the bureau where he could not protect himself, because a note to me or to Davis or to any of these men to the effect that these were not his sentiments would have done a great deal toward correcting any alarm in the minds of the men who are involved.

Senator SUTHERLAND. You have, as I understand you, no evidence whatever in your possession to indicate that the Secretary of the Interior instigated or encouraged these newspaper attacks upon the bureau?

Mr. NEWELL. That is correct. I am not bringing that out; I simply say we were not assured that these clippings did not represent the views of the department.

Senator SUTHERLAND. It seems to me, Mr. Pepper—I do not know what the remainder of the committee may think about it—that we have been going pretty far afield in this whole investigation. I undertake to say that an examination of this entire record will disclose that at least nine-tenths of this testimony would not be admitted in any court of justice on earth. I won't say on earth, but in any court of justice that practices under the principle of the common law, it would not be admitted under well-settled principles of law. And we have admitted it all here, and we will consider it for what it is worth; but when you are bringing in here a mass of newspaper articles written by Tom, Dick, and Harry, many of them perhaps entirely irresponsible—we do not know who they are—and undertake to put them in and have the committee draw any sort of an inference at all, it seems to me that we are going altogether too far.

Senator PURCELL. The purport of that, as I understand it, is that these reports are based upon information obtained from the department which could not have been obtained unless it was given out by the head of the department.

Senator SUTHERLAND. But Mr. Newell says he has no evidence whatever to indicate the Secretary of the Interior instigated or encouraged these statements, and Mr. Pepper does not promise to connect it up with the Secretary here. What is the use of putting it in, any way?

Mr. PEPPER. Senator, it is a delicate matter to handle, but it deserves consideration. Here, for instance, is a large heading "Salary same in job offered Thompson;" "Pick Seattle man," "Ballinger wants R. H. Thompson in reclamation work; may succeed F. H. Newell." Here is a series of newspaper statements which purport to be statements that this man's position was actually being offered to a townsman of the Secretary of the Interior, although nothing of that kind had been even suggested to Mr. Newell. Mr. Newell goes to the Secretary and gives him an opportunity to make some statement respecting the continuance of his confidence in the director and in the Service, and I think this committee wants to hear just exactly what was said to Mr. Newell at that time.

Senator SUTHERLAND. That is not objected to in any way; I do not suggest any objection to that. But what I do suggest an objection to is the putting into this record of a great mass of clippings

from various newspapers all over the country, making attacks upon the Reclamation Service or making attacks upon anybody. It is not evidence.

Mr. PEPPER. I realize that very keenly, sir, and it is not my purpose to put into the record anything excepting that which the witness says was actually a fact in his consciousness when he had a certain conversation with the Secretary.

Senator ROOT. Is the fact that it was in his consciousness, does that fact make the newspaper articles evidence?

Mr. PEPPER. I do not think it does, sir. Clearly I should not contend, if we were sitting here under the ordinary rules of evidence that the documents would be admissible.

Senator SUTHERLAND. I think, Mr. Pepper, a great deal has been said in the newspapers, not only during the last two or three years but further back than that, that had best be forgotten and not perpetuated in this record.

Mr. PEPPER. The time will come, Mr. Chairman, and Mr. Senator when it will be necessary for us to trace, with some particularity, the genesis of the whole unfortunate matter which we are sitting here to investigate and consider, and these things are footprints in the snow which we will have to follow back at a future time.

Senator ROOT. You have been dealing with Deuteronomy up to this time.

Mr. PEPPER. Looking forward with the hope of Exodus.

Mr. GRAHAM. If the newspaper clippings which you propose to offer had been called to the attention of the Secretary, and it could be shown that he knew such matter was being generally published then I think it would be quite relevant to show how he received that information, and whether he did or did not do anything as a consequence of it. But, unless you in some way connect this information with the Secretary, it would seem to me that no inference could be drawn against him from matter of which he had no knowledge.

Mr. PEPPER. The question of the use to be made of the documents that I have submitted for such action as the committee chooses to take will, of course, depend upon the extent of Mr. Newell's statement or testimony respecting the way in which it was brought home to Secretary Ballinger. I do not know how specifically the thing was brought home to him. If I can elicit the fullest and most particular kind of a statement from Mr. Newell on the point, I want to do it.

The CHAIRMAN. Suppose you interrogate him on that point.

Mr. PEPPER. I should like to. Now, Mr. Newell, just how far in this conversation in which you mentioned these newspaper attacks on the service, just how far were you specific in your reference. I do not mean to the dates of the publications or the names of the papers but the subject-matter of their published utterances?

Mr. NEWELL. That was confined more to the names of the writers, and I used with him the name particularly of the correspondent I have mentioned before, Breckens; I also spoke about articles by Harry Brown.

Mr. PEPPER. Are those some of the articles there referred to; that is, is he or was he the correspondent of some or all of the papers there specified?

Mr. NEWELL. He is the correspondent for the Portland Oregonian and of the Idaho Statesman, of which clippings are here.

Mr. PEPPER. Did you mention anybody else? How about Clark?

Mr. NEWELL. I don't know whether I mentioned Clark or not, but he seemed to understand the reference without any question. I explained to him that it was my hope that our relations would be better in the future. I do not recall that he made any specific reply.

The CHAIRMAN. Mr. Newell, does your office patronize the so-called clipping bureau, the newspaper-clipping bureau?

Mr. NEWELL. We have clippings; yes, sir.

The CHAIRMAN. Did you have them before this time?

Mr. NEWELL. Yes, sir; we had clippings.

The CHAIRMAN. Isn't it a fact that long before this there were frequent criticisms of your service in the newspapers out West?

Mr. NEWELL. There was criticism of individual acts, especially with reference to the collection of dues, but I do not recall general attacks of this character.

The CHAIRMAN. Had those previous attacks purported to come from the Secretary of the Interior?

Mr. NEWELL. No; those were all local questions, of differences of opinion between the engineers and the contractors, and such matters of that kind.

Senator FLETCHER. Do you know of the relation between the Secretary and these correspondents you have mentioned at that time; were they friendly or otherwise?

Mr. NEWELL. Yes, sir; they were friends of his, and are now.

Senator FLETCHER. Are now?

Mr. NEWELL. Yes, sir. Mr. Breckons is clerk for Senator Warren, and I think that Brown and others are very friendly, and are men who would presumably get correct information.

Senator SUTHERLAND. Are they unfriendly to you?

Mr. NEWELL. No, sir; I don't think they are. They are friendly with me.

Senator SUTHERLAND. Do they come to your office occasionally for information?

Mr. NEWELL. Not very often. They come, perhaps, once or twice a month, sometimes oftener.

Senator SUTHERLAND. There have been, I suppose, newspaper statements upon your side of the question—that is, attacking the Secretary and attempting to vindicate the service?

Mr. NEWELL. Not in the slightest. I have been very careful not to do anything of that kind.

Senator SUTHERLAND. Oh, no. I say there are such publications.

Mr. NEWELL. I do not recall any; nothing that I have immediate knowledge of now.

Senator SUTHERLAND. Let me ask you another question. Mr. Brown lives here now?

Mr. NEWELL. Yes, sir; he lives in Washington.

Senator SUTHERLAND. Mr. Breckens is here?

Mr. NEWELL. Yes, sir.

Senator SUTHERLAND. In Washington?

Mr. NEWELL. I presume so.

Senator SUTHERLAND. Those correspondents are here in Washington, and everyone of them could be called to testify of what the actual fact is?

Mr. NEWELL. I assume so; yes, sir. The point that I wanted to make, however, is not on the attack, but that we did not get the

assurance, which I should have given to my subordinates, that the attack was not justified. That is the unfortunate feature which I tried to lay before the Secretary.

Mr. PEPPER. Now, Mr. Newell, this matter was led up to by my inquiry on the subject of alleged secret criticism. I had asked you whether or not at interviews during the summer with the Secretary you had frankly taken up with him matters of dissatisfaction on your part in respect to his dealings with the service. You instanced some of those interviews. You stated you took up with him this matter of newspaper criticism; you also referred to the matter of dealing with your subordinates. What was that—what did you talk to him about on that line?

Mr. NEWELL. I pointed out that it was not in accordance with custom and good administration for him to give direct orders to these men, or, if the circumstances required it, that I should know of the fact so that our orders might not be crossed, and that our records should be complete, especially with reference to the payment of any expenses that might be incurred; that it was very demoralizing to have orders from different heads, especially if the Washington office does not know of it—matters come up, and we are very much disturbed about it.

Mr. PEPPER. Do you mean specifically that orders were given directly by the Secretary to your subordinates, and that you did not receive a record of those orders?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. Well, what, if anything, did the Secretary say when you brought that matter to his attention?

Mr. NEWELL. Why, he admitted that that was not good administration and that it might result in some confusion, but he repeated his saying that he was responsible for the conduct of affairs.

The CHAIRMAN. What instance can you give, Mr. Newell, where he gave orders to subordinates without informing your bureau about it?

Mr. NEWELL. The instructions to Perkins, referred to in Mr. Davis's testimony.

The CHAIRMAN. That is that black-tent matter?

Mr. NEWELL. Yes; that was in May. Then the instructions to Hill and Hobson in regard to going with him up the Hetch Hetchy Valley.

The CHAIRMAN. You mean where the city of San Francisco tried to get water out of the Hetch Hetchy Valley?

Mr. NEWELL. Yes, sir.

The CHAIRMAN. Didn't Secretary Garfield give him permission and license to do that?

Mr. NEWELL. Yes, sir; I believe he did.

The CHAIRMAN. To build a dam there?

Mr. NEWELL. I believe so.

Mr. PEPPER. Is that the matter to which you refer when you speak of permission being given to Hill and Hobson to go to a certain point?

Mr. NEWELL. No; the chairman was asking about the Hetch Hetchy Valley.

The CHAIRMAN. It was relating to that one instance you gave where he passed an order over your head without giving your bureau any information about it?

Mr. NEWELL. Without giving the office any information.

The CHAIRMAN. What was that order about?

Mr. NEWELL. I have never seen the order. He simply instructed the engineers to make certain reports to him.

The CHAIRMAN. About that matter?

Mr. NEWELL. About that matter. And when they came to settle their accounts, then the question came up under what authority they had been acting. That was the first I knew of it.

The CHAIRMAN. Well, now, what other instances besides those two?

Mr. NEWELL. The instructions to Hobson with reference to the power plant on the Truckee-Carson, that Mr. Davis has referred to. Then others crop up from time to time as they come up in the question of adjustment of accounts.

The CHAIRMAN. That is all, Mr. Pepper.

Mr. PEPPER. Now, Mr. Newell, when some important change of policy came up for consideration—as for instance, in connection with this matter of reclamation certificates—was that a matter which was taken up between you and the Secretary?

Mr. NEWELL. No; I never knew of his action in that until some time afterwards.

Mr. PEPPER. Where, in point of fact, did you stand on that matter of reclamation certificates? Was that a system or plan which had your support and approval?

Mr. NEWELL. Yes, sir; that was a plan that was worked up under Mr. Garfield, and I believe was producing very excellent results.

The CHAIRMAN. Was it initiated by your bureau—I mean did you recommend it to Secretary Garfield, your bureau?

Mr. NEWELL. The origin of that, I think, is in Secretary Garfield's trip in 1907, when many of the settlers appealed to him to allow them to work out—to build their own ditches and reduce the cost to them; and I think Mr. Garfield first talked it over with me from the importunities of the settlers on the ground. I told him that was in accordance with the letter and spirit of the act, as I understood it; that we were to build the large ditches and some arrangements should be devised for allowing the settlers to build the smaller ditches. He had that in his mind and kept referring to it.

The CHAIRMAN. Did that refer to settlers on public land, or did it refer to settlers on private land, or both?

Mr. NEWELL. Mainly settlers on homestead lands, who were waiting for water.

The CHAIRMAN. Public land?

Mr. NEWELL. On public land, who wanted to get the ditches built to them quickly and at less cost than it would be if we built them ourselves.

Mr. PEPPER. The abrogation of that system, or the change in policy, was, as I understand it, not in fact made a subject of a conference or discussion between the director of the service and the Secretary of the Interior?

Mr. NEWELL. No, sir; we did not talk it over.

Mr. PEPPER. Well, Mr. Newell, that seems to suggest an inquiry from you in regard to the pending question of bond issue. Under existing conditions, if the reclamation certificates are not available, I believe you are in favor of the adoption of the bond-capital scheme?

Mr. NEWELL. I am in favor of getting more money. As to the

precise scheme, I think there are some questions. In fact, there are so many schemes being discussed that I should not want to commit myself to any of them at present.

Mr. PEPPER. Now, in an answer you gave to a question, I think by the chairman, you referred to the Perkins case. Will you be good enough to tell us in sequence what your relation has been to that Perkins matter?

Mr. NEWELL. The matter, as I understand it, was initiated by Perkins directly with Mr. Ballinger; and some time in May, on May 6, the matter was discussed by Mr. Perkins and Mr. Ballinger in the presence of one of my assistants, Mr. Waite; Waite, who was a stenographer, took down certain notes and wrote them out. I did not know of those for many months afterwards, but in accordance with that Mr. Perkins considered himself authorized directly by the Secretary to take up this scheme with the railroads and work it out. I knew nothing of it as to what its purposes and what its extent were.

Mr. PEPPER. May I ask, whether you are able to give us a reference to the page in the testimony where the Waite memorandum appears?

Mr. NEWELL. The Waite memorandum is on page 1804, and the first that I knew of the matter was when I was coming east through St. Paul, I dined at the club with Thomas Cooper, of the Northern Pacific. He told me that Mr. Louis W. Hill, president of the Great Northern, was very much excited about this matter, and had accused us of undue favoritism to the Harriman system.

Mr. PEPPER. When you say us, you mean the service?

Mr. NEWELL. Yes; the Reclamation Service. I told him I did not know anything about it, and later in the evening I saw Mr. Hill. He charged Perkins directly with graft, and I defended him.

Mr. VERTREES. When was that, Mr. Newell?

Mr. NEWELL. That was on September 28.

Mr. VERTREES. Of what year?

Mr. NEWELL. Of 1909.

Mr. PEPPER. Now, Mr. Newell, may I interrupt you to inquire whether you had learned at that time, and if so, when you had learned, of the instructions alleged by Perkins to have been given to him by the Secretary, as per the Waite memorandum?

Mr. NEWELL. I had learned of that on September 28. These interviews with Cooper and Hill were on the 27th, the night of the 27th, and I learned of the memorandum on the next morning.

Mr. PEPPER. That memorandum bears date of May 6, 1909, and seems to refer to an interview between Mr. Secretary Ballinger and Mr. Perkins as of that date?

Mr. NEWELL. I believe so.

Mr. PEPPER. I understand, then, you had not, in that interval, known of what Mr. Perkins alleges was the arrangement made at that time?

Mr. NEWELL. No; I had known nothing of it.

Mr. PEPPER. Well, now, you are going on to tell us what happened on the 28th, on the date that you had the interview with Cooper and Hill.

Mr. NEWELL. I immediately, in the presence of Mr. Perkins, dictated a letter to Cooper, which appears on page 1801 of the record.

in which I stated the general understanding as I received it from Perkins, and emphasized the fact that Perkins had not received any money for his personal advantage.

Mr. PEPPER. In that letter on page 1801 you say, among other things [reading]:

The matter seems to have been initiated largely by Mr. Ballinger, the Secretary of the Interior, when he was in the Chicago office; hence the details were not referred to our Washington office.

Is that a reference to the Waite memorandum which was shown to you at that time?

Mr. NEWELL. Yes, sir.

The CHAIRMAN. Who showed you the Waite memorandum; who brought it to your attention?

Mr. NEWELL. I asked Mr. Perkins what his authority was for going into that thing, and he got this memorandum from Waite.

The CHAIRMAN. And gave it to you on the 28th?

Mr. NEWELL. On the 28th of September, yes. He told me he had taken the matter up with Mr. Ballinger and considered that a matter between himself and the Secretary. I asked him why he had not taken it up with me, and he said he was afraid I would turn it down.

The CHAIRMAN. Go on.

Mr. NEWELL. So on my arrival at Washington—

Mr. PEPPER. May I interrupt you just a moment. I understand in that letter there is, is there not, some statement by you to the effect that Mr. Perkins was not getting anything for himself in this connection, or am I wrong in that?

Mr. NEWELL. Yes, sir; this states in the third paragraph [reading]:

I can assure you that Mr. Perkins does not profit financially, directly or indirectly, although it is understood that upward of \$100 per month may be utilized by him for personal expenditures, such as railroad fares, subscriptions, etc., in connection with his personal supervision.

Mr. PEPPER. What were the circumstances under which that letter was written?

Mr. NEWELL. That was written after a conversation with Mr. Perkins, and in his presence.

Mr. PEPPER. Was it written in longhand or dictated?

Mr. NEWELL. It was dictated.

Mr. PEPPER. Now, on a subsequent page of the record, to which I will refer you in a moment, there is a copy of an affidavit of a stenographer, Kathryn Walker, on page 1849, in which she says:

I distinctly remember the statement of Mr. Perkins that he was receiving extra compensation for lectures delivered, but that it had nothing whatever to do with the "black-tent publicity campaign." I can not recall the exact words, but my recollection is very clear as to the substance of what was said. The statement was made just as Mr. Newell was beginning the dictation to me of a letter, and it is possible that he did not hear or fully understand the statement.

Will you be good enough to tell us what statement you did hear and what you did understand as a result of those statements?

Mr. NEWELL. My recollection is very clear that Mr. Perkins bore out that statement that he did not directly or indirectly receive any compensation for his personal benefit, and subsequently he explained by saying that there were two funds, a second fund of which I knew nothing, and a black-tent fund, and his reply to my question pertained only to the black-tent fund, from which he did not receive any personal benefit.

Mr. PEPPER. Before coming to that later matter, may I ask whether anything was said by Mr. Perkins to you at the interview at which you dictated the Cooper letter, indicating the existence of this other fund, or a receipt by him of compensation thereof?

Mr. NEWELL. No, sir; I never knew of any such second fund—personal fund.

Mr. PEPPER. Well, if there had been a personal fund in addition to the thing called the "black-tent fund," would your letter to Mr. Cooper have stood; in other words, did you intend in that letter to express the idea that Perkins was getting no money from the railroads?

Mr. NEWELL. Was getting no money in any shape or form whatever. The question I put to Perkins was this: "I want to know are you getting any personal benefit, a dollar, out of this in any way for your personal benefit?" He said, "No."

Mr. PEPPER. Now, you say that letter to Mr. Cooper was dictated in his presence.

Mr. NEWELL. In his presence in his office.

Mr. PEPPER. How definitely in his presence—I mean at opposite ends of a room as big as this, or how?

Mr. NEWELL. It was a room about quarter the size of this, and I was as near to Perkins as I am to the chairman, probably a little nearer.

The CHAIRMAN. Can you not reach that quicker, Mr. Pepper, in this way; could Mr. Perkins hear when you dictated that letter, or did he read it afterwards?

Mr. NEWELL. I dictated it. It was written out and handed to Mr. Perkins for him to look over.

The CHAIRMAN. He saw it?

Mr. NEWELL. He saw it, and I ask him to send the carbon to my office for the files.

Mr. PEPPER. Did he do that?

Mr. NEWELL. He did.

Mr. PEPPER. Did you in the course of the dictation make some reference to him, as he sat at his desk as to the correctness of the statement on that point?

Mr. NEWELL. Yes, sir; I asked him if that was correct, and he said it was.

Mr. PEPPER. On that particular point?

Mr. NEWELL. On that particular point; I wanted to be very sure on that point. Mr. Hill has been so explicit in his statement that Perkins was grafting on the service.

Mr. PEPPER. Now, so much for the interview between yourself and Perkins on September 28. What happened next?

Mr. NEWELL. As soon as I returned to Washington I wrote a letter to the Secretary, embodying the substance of this conversation, dated September 30, and printed on page 1803 of the testimony.

Mr. PEPPER. Of course, the letter speaks for itself, but just for brevity, may I ask whether that is a letter in which you made some reference to the fact that Perkins did not receive anything for himself in this matter; is there some paragraph to which you can call attention—the last sentence in the letter, for instance?

Mr. NEWELL. Yes, sir; the last sentence in the letter. The situation was that Mr. Louis C. Hill was very much exercised, and said his father, Mr. James J. Hill, would take the matter up with the Pres-

nt, and I wished to have Secretary Ballinger informed so that the
ing might not be sprung on him as a surprise, and give him the fact.
e strong point in my mind was that Perkins did not profit per-
nally.

Mr. PEPPER. And you are now referring to the sentence:

I do not believe that Mr. Perkins is profiting personally in any financial way, but,
the contrary, is giving his time and energy to the work.

Mr. NEWELL. That was my wish at the time.

Mr. PEPPER. And your understanding at the time was from Per-
ns's statement, that this authority had been given to him by
e Secretary direct, and when I say this authority, I mean the
thority to engage in the black-tent enterprise.

Mr. NEWELL. The authority to take up these matters without
ing to me for express permission. It was granted him by the
cretary.

Mr. PEPPER. Now, at one stage of this matter Mr. Perkins claims
at you in February, 1908, nearly two years before this time, or a
ear and a half, had given him authority by a letter of February 24,
08, to engage in this matter. Is the letter of Perkins to you of
ebruary 14, 1908, and your reply of February 24, 1908, the corre-
spondence that you understand him to refer to?

Mr. NEWELL. Yes, sir.

The CHAIRMAN. That correspondence, I understand, is already
inted.

Mr. PEPPER. Those two letters are not in the record. The others
ere put in from the file, but when I put the others in I had not
cated these two, and I want to put them in now.

The CHAIRMAN. There is a letter in the files, if I remember it—and
read it afterwards—stating that Mr. Newell called his attention to
l these things.

Mr. VERTREES. These two are not in, Mr. Chairman.

The CHAIRMAN. Very well; if there is no objection they will be
serted.

Mr. VERTREES. I would like to have them read to the committee.

Mr. PEPPER. Mr. Newell, will you be kind enough to read those two
tters?

Mr. NEWELL. This letter of February 14, 1908, from Mr. Perkins
me is as follows:

[Subject: Lectures—Illustrated and others.]

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
877 Federal Building, Chicago, February 14, 1908.

TO THE DIRECTOR U. S. RECLAMATION SERVICE,
Washington, D. C.

SIR: In reply please refer to File 11-A2.

In accordance with your personal direction, I have been delivering various lectures
Chicago and the immediate vicinity, on the subject of the Reclamation Service.
t the present time I am lecturing every Friday evening under the auspices of the
Chicago Daily News; on the 19th of this month I will lecture at Ames and Des Moines,
owa; on March 2, I am to speak to one of the men's clubs of the city.

While doing this work, I have had several requests from various organizations which
ere willing to pay for my services while lecturing on this subject or similar subjects.
For some time I have had in mind preparing a series of illustrated lectures dealing
th the resources of this country and their conservation. This series of lectures
ould probably deal with the work of the Reclamation Service, the Forestry Service,

1984 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

the Agricultural Department, the Army and Navy, and of the country at large; the series to be called "Our own country." I spoke of this matter to the Secretary, Mr. J. R. Garfield, and as presented to him, he approved of my doing this work and receiving adequate compensation. The point he impressed upon me was that it must be done in my own time, and that I must not use material which had not yet been made public by the Government.

Before taking any further steps in this matter, I would request your authorization to proceed along the lines approved of by the Secretary.

Respectfully,

E. T. PERKINS, *Engineer in charge.*

On February 24, 1908, I wrote to him as follows:

[FHN-JCW]

FEBRUARY 24, 1908.

Mr. E. T. PERKINS,
777 Federal Building, Chicago, Ill.

DEAR SIR: Your letter of February 14 has been received, File 11-A2, with reference to lectures in Chicago and vicinity. I am very glad you brought this matter to the attention of Mr. Garfield, and approve your taking up the work, subject to the conditions he stated, namely, that of doing it on your own time, and not using material which has not yet been made public.

It is, of course, unnecessary to call your attention to the fact that in giving time to this matter it should not be at a sacrifice of the daily routine essential in your office.

Very truly, yours,

F. H. NEWELL, *Director.*

The CHAIRMAN. Those letters are admitted.

Mr. PEPPER. Did you, when you wrote that letter, or did you at any time, during oral conferences with Perkins, have in mind the arrangements such as appear ultimately to have been made by which Perkins accepted salary from railroads or enterprises with which the Reclamation Service had business relations?

Mr. NEWELL. It never occurred to me that any engineer would do that.

Mr. PEPPER. Was that matter before your mind when you wrote that letter of February 24?

Mr. NEWELL. Not in the slightest.

Mr. PEPPER. And so far as you are advised, the matter to which it is sought to apply that letter did not originate until more than a year later?

Mr. NEWELL. Probably not.

Mr. PEPPER. You were explaining, I think, that on a certain date you wrote the letter to Mr. Ballinger which appears on page 1803. Will you take up your narrative from that point?

Mr. NEWELL. Yes, sir. After writing that letter I then instructed our traveling inspector, Mr. Huffer, on October 18, as soon as I obtained his address, to check up Perkins's accounts, as he would do naturally in the course of his business, and in particular to check up any accounts or moneys which might have been received by Perkins not officially, but received and expended in the name of the Reclamation Service, and Huffer acknowledged the receipt of that and stated that when he came East he would investigate carefully the condition of the Chicago office.

Mr. PEPPER. The letter to Huffer is the letter of October 18. Is that the one that appears on page 1822 of the record?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. And the next step, was what?

Mr. NEWELL. About that time I left for the West; and the next step, to my knowledge, was on my return through Chicago I met

Huffer, who had been sent out by Mr. Davis because Davis regarded the condition as very serious, with the statement that in checking up Perkins's accounts he found this second fund—the payment of the \$500 checks, attributed to Perkins, which was not the black-tent fund.

Mr. PEPPER. May I interrupt you long enough to inquire whether it was not in the interval between the letter of October 18 to Mr. Huffer and the incident that you are now referring to that you had written to the Secretary the letter of October 20, that appears on page 1821, asking a written approval of the black-tent enterprise, and that on the 29th of October Mr. Ballinger had replied, as per the letter on page 1821, limiting Perkins's activities? I simply want to keep the sequence.

Mr. NEWELL. Yes, sir; that is correct.

Mr. PEPPER. Then these letters speak for themselves, and you may go on now from the point at which I interrupted you.

Mr. NEWELL. I met Huffer in Chicago and took the matter up with Perkins, and he asked me to defer taking the matter up with the Secretary until he, Perkins, could discuss it with the Secretary, because of the fact that he had received his original authority to proceed from Mr. Ballinger and he was afraid that I would prejudice his case, because he saw that I was very greatly disturbed about it.

Mr. PEPPER. Are you referring specifically now to this second fund, so called?

Mr. NEWELL. To this second fund.

Mr. PEPPER. And that fund just briefly was what?

Mr. NEWELL. That was \$500 a month, a check paid directly to Perkins.

Mr. PEPPER. From the railroads?

Mr. NEWELL. By the Harriman system; yes, sir; and Perkins also stated that he had information that Mr. Ballinger was coming to Chicago in a few days, and I told Perkins if that was the case I would let him take it up with Mr. Ballinger, but that I must set myself right with the Secretary with reference to his obtaining money personally. So that upon my return to Washington I wrote the letter of November 24, printed on page 1833, giving the matter as clearly as I could to Mr. Ballinger, without prejudicing or creating in his mind any preconceived ideas, in order to allow Perkins to take it up directly with Mr. Ballinger.

Mr. PEPPER. Now, as I understand it; that was in November?

Mr. NEWELL. That was November 24.

Mr. PEPPER. Previously, on November 17, Mr. Davis had written to Mr. Perkins a rather peremptory letter, that appears on page 1830, directing him to submit a full report at once. Is that correct?

Mr. NEWELL. Yes, sir. Mr. Davis wanted to know by what authority he was acting.

Mr. PEPPER. Did you mention—I have forgotten for the moment—the fact of the receipt of the Huffer report?

Mr. NEWELL. When I met Huffer in Chicago on my return, I showed him his report and also the letter of Davis to Perkins calling on Perkins for a statement.

Mr. PEPPER. Did you receive from Mr. Davis, who had been in personal touch with the matter, both between himself and Perkins and between himself and the Secretary, a letter of November 18 recommending that Perkins's resignation be asked for?

Mr. NEWELL. Yes, sir; I received that; it is printed on page 1833.

Mr. PEPPER. And then what action did you take?

Mr. NEWELL. I had already promised Perkins that I would give him an opportunity to explain to the Secretary when he came to Chicago, within a few days, and was practically estopped from taking any action by reason of that promise.

Mr. PEPPER. And what you did was to write the letter of November 24, laying the matter before Mr. Ballinger, and did you in that letter, which appears on page 1834, call the Secretary's attention to the fact of Perkins's receipt of this \$500 a month?

Mr. NEWELL. Yes, sir. In the paragraph next to the last I stated:

In my letter to you of October 20 I emphasized the fact, based upon his statement to me, that Mr. Perkins derived no financial advantage from his connection with the various projects mentioned. I am now advised that he has received \$500 per month for the period of four months, \$300 of which Mr. Perkins states is for lectures at the rate of \$50 per lecture for six lectures a month, and \$200 per month for traveling and incidental expenses.

I felt it incumbent on me to correct the statement of October 20 at the same time leaving the matter open for Mr. Ballinger to take it up personally with Mr. Perkins.

Mr. PEPPER. Did you, under date of November 29, write the letter which appears on page 1835 of the record to Perkins?

Mr. NEWELL. Yes, sir; in the meantime Mr. Ballinger had gone to Chicago. Perkins had not seen him, and I wrote to Perkins then my views on his actions.

Mr. PEPPER. And on or about December 1 did you have an interview with Mr. Davis, following upon Mr. Davis's interview with Mr. Ballinger?

Mr. NEWELL. Yes, sir; I discussed the situation on that and subsequent days.

Mr. PEPPER. What report did Mr. Davis bring to you of the Secretary's decision in the matter?

Mr. NEWELL. Mr. Davis gave me the impression that the Secretary was inclined to support Perkins in the matter, but that he agreed with us that the Chicago office should be reorganized, and accordingly instructions were given to Doctor Lind in my letter of December 1 embodying, as I understood, the wishes of the Secretary to proceed to Chicago and try to improve conditions there.

Mr. PEPPER. Something has been said to the effect that the Doctor Lind had at some previous time an illness that affected his mental faculties or his competency.

Mr. NEWELL. Doctor Lind had been a very faithful and energetic accountant and inspector, and had become sick. He had recovered from a long siege of typhoid, I think it was, and then resumed duty but in February or March, 1909, he began to have trouble with his head, and subsequently went to a place for an operation, and a growth was removed from the inside of his skull, so that he felt that he had perfectly recovered. He was and is in excellent health at the present time.

Mr. PEPPER. So far as you know, was there any reason in December, 1909, why he should not have been detailed for this particular job?

Mr. NEWELL. No, sir; he was the best man available. He was thoroughly familiar with conditions in the field and is a man of large

xperience and breadth and a first-class man in every respect. I regard him as the very best inspector that we have ever had.

Mr. PEPPER. He had, or had he not, some personal difficulty with Perkins, so far as you know?

Mr. NEWELL. None other than the ordinary difficulty that an inspector has in checking up the conditions.

Mr. PEPPER. At all events, this gentleman was sent, and you are referring to page 1837—your letter of December 3 to him—and I ask you to explain particularly the last paragraph of that letter. Will you please read that paragraph and state what it is?

Mr. NEWELL. It is as follows:

The Secretary desires it distinctly understood that this assignment of yours is temporary, and that nothing connected therewith is to be construed as a reflection upon Mr. Perkins or his administration.

Now, that was drafted by Mr. Davis as a statement of the Secretary's desires in this matter.

Mr. PEPPER. Then you signed the letter as drafted?

Mr. NEWELL. I signed the letter; yes, sir.

Mr. PEPPER. That letter has the stenographic sign at the top of the sheet, "F H N-IMP." What does that mean?

Mr. NEWELL. I dictated the first draft to my stenographer and submitted it to Mr. Davis, and I think interlined in pencil this last paragraph, and then the letter was recopied in accordance with Davis's conversation with the Secretary.

Mr. PEPPER. Then, as appears from the same page, Mr. Perkins on that same day wired for authority to come to Washington, and what action was taken upon that?

Mr. NEWELL. He was authorized to come to Washington.

Mr. PEPPER. Now, what action did you take on or about December 4?

Mr. NEWELL. On December 4 I wrote—

Mr. PEPPER. There appears to be a letter of that date on page 1837?

Mr. NEWELL. Yes, sir. I wrote to Perkins describing the condition as I understood it and intimating to him that it would be wise at that time, in view of the conditions existing, and in view of the fact that he had been talking of getting outside work, that then was the time for him to take advantage of the opportunity.

Mr. PEPPER. Will you tell the committee, Mr. Newell, just as specifically as you can, what the facts are about this course that you took in this matter? It appears that Mr. Davis had submitted to you, and had reported to the Secretary, a distinct recommendation that Mr. Perkins should be asked for his resignation. I would like you to state just what you did in that matter and what considerations moved you.

Mr. NEWELL. I appreciated Davis's action. I could not see that he had a legal ground, although he had a strong moral ground, for the course, and I was estopped from joining in that by the promise I had previously made to Perkins that he would have full opportunity to explain this matter to the Secretary, because he was acting, as he asserted, or believed, under authority from the Secretary to take this up independently of me, and he did not regard it as fair that I should intervene in the matter which he had initiated with the Secretary direct. Therefore I consulted with Mr. Davis. He saw the Secre-

tary. The Secretary seemed inclined to regard the action of Perkins as not illegal, and in sending Lind out to reorganize, instructed us that nothing should be done which reflected on Perkins.

Mr. PEPPER. Now, what it is that you desire the committee to infer respecting your own attitude in this Perkins matter; in other words, what do you regard as being the significance of Perkins's conduct in terms of its effect upon the Reclamation Service?

Mr. NEWELL. I think it is destructive of moral standards, and a condition which should not be permitted to exist. I think every engineer and every man in the service regard it as distinctly demoralizing to permit any man to receive money from a corporation with whom we are doing business.

Mr. PEPPER. Would you make a distinction in that respect between the receipt of an honorarium for lectures or addresses from an institution with which you have no business relations?

Mr. NEWELL. That is the whole distinction. Mr. Perkins could very properly receive money from the University of Chicago, for instance, with which we have no business relations, but no man should receive money from a man or corporation with whom he is doing business officially. It is a well-established principle of all engineering ethics.

Mr. PEPPER. Is this particular case the first one that you know of in which such an arrangement has been made by an officer of the Reclamation Service?

Mr. NEWELL. It is the only one that I have ever known in the Geological Survey or in the Reclamation Service.

Senator FLETCHER. What were his admissions to you, Mr. Newell, on that point?

Mr. NEWELL. He made no admissions until after Huffer's report, and then he simply said that he had done it and that he believed that Mr. Ballinger and he could settle it among themselves.

Senator FLETCHER. Had done what?

Mr. NEWELL. That is, he had received money from this corporation with whom he was carrying on business.

Senator FLETCHER. Did he say how much and for how long a time?

Mr. NEWELL. The Huffer report shows checks for \$500 per month for four months. I did not discuss the amount. It was the principle of the matter.

Senator FLETCHER. Did you show him the Huffer report?

Mr. NEWELL. He knew the substance of it.

Senator FLETCHER. Did he admit the correctness of that?

Mr. NEWELL. He did not deny that he got these \$500 checks. They were placed to his personal account.

Senator ROOT. Did they appear on the books of the Chicago office?

Mr. NEWELL. No, sir.

Senator ROOT. Where did Huffer find them?

Mr. NEWELL. In checking up the receipts of the black-tent fund Huffer went around to the different railroad offices to see that the black-tent fund had been properly credited to check against them, and in the Harriman system office, in checking over, he found these \$500 checks which, as he states, the man there could not explain. He simply said he had orders to send them to Mr. Perkins regularly each month, and that of course made Huffer immediately suspicious of the thing.

Mr. PEPPER. And what developed then?

Mr. NEWELL. He made his report to Davis and Davis called on Perkins for an explanation and recommended to me that Perkins be discharged.

Mr. PEPPER. And it was in consequence of Huffer's inquiry at the railroad offices and the ascertainment of the discrepancy between the sum paid by them to Perkins and the sum accounted for in the black-tent fund, that this personal fund was ascertained?

Mr. NEWELL. That was our first knowledge of the existence of his personal fund.

Mr. PEPPER. Then, Mr. Newell, did you in conference with Mr. Perkins remind him of the statement which you had understood him to make at the time you wrote the letter to Cooper?

Mr. NEWELL. Yes, sir; he explained that by saying, "Why, you were talking about the black-tent fund." I said, "I do not know any difference; I do not know any other than the one fund. If you have two funds, you did not develop that to me, and I supposed that you were talking about the total receipts and not about any particular portion of them."

Mr. PEPPER. And he merely said that he had been limiting his treatment to the black-tent fund and after that it was technically true, was it not, that if you make that division of funds, that he did not receive anything out of the black-tent fund except for expenses?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. Mr. Newell, did he at that or some other interview about that time refer to any personal service that he had rendered, or been willing to render, to you, as a result of a conference that he had had with Mr. Garfield and Mr. Pinchot some time last July relative to some suggestion for checkmating attacks on the Reclamation Service?

Mr. NEWELL. Yes; and he thought I should condone the matter, because he had always been not merely friendly but active in personally defending the service from attacks on me and others, and showed that he was entitled to consideration because of his personal friendship to me and to all the other officers of the service.

Mr. PEPPER. In point of fact, you had some talk, had you not, last July with Mr. Pinchot, at a time when Mr. Pinchot suggested some movement in defense of the Reclamation Service?

Mr. NEWELL. I met Mr. Pinchot on the street in the latter part of August. He spoke about the meeting at Spokane, and that the friends should be got together—the friends of conservation, reclamation, and so on—and I told him that I did not think it wise or necessary to do anything of that kind. Then, when I came through Chicago, Perkins spoke about taking the matter up with Mr. Pinchot and going down to meet him at Mr. Garfield's house in Mentor, and I explained to him, as I had to Mr. Pinchot, that I did not think it wise for any official of the Reclamation Service to take any interest in those matters or try to bring the friends together in any public meeting.

Mr. PEPPER. That had relation, had it not, to some attempt to get up a demonstration for the Reclamation Service at the Irrigation Congress?

Mr. NEWELL. Whatever it might have been. I simply said I did not believe in it, I never had, and never would.

Mr. PEPPER. And you did not, in point of fact, take part in that matter, and the thing dropped?

Mr. NEWELL. Yes; that is all I know of it.

Mr. PEPPER. And this was the thing that Mr. Perkins called up to you?

Mr. NEWELL. He referred to it as an instance of his willingness to do anything personally to help me or anybody else, but I told him that was entirely beside the mark.

Mr. PEPPER. Well, then, the fact that you wrote your letter of December 4 to Mr. Perkins, intimating that it was for the good of all concerned that he should resign, subsequently came to the knowledge of Secretary Ballinger, did it not?

Mr. NEWELL. It did.

Mr. PEPPER. And what occurred between you and the Secretary?

Mr. NEWELL. The Secretary was very angry that I should have written such a letter, especially the paragraph next to the last, which he referred to particularly.

Mr. PEPPER. That was the one in which you intimated it would be a good thing for Perkins to seek employment outside of the service—to get outside of the service?

Mr. NEWELL. I will read it if you are willing.

Mr. PEPPER. Certainly. I would much rather have you do it.

Mr. NEWELL. The objectionable paragraph is as follows:

This brings up the matter which I have been considering since I talked with you. It is obvious that you have attained, in connection with the activities of the Chicago office, a wide acquaintance and an experience which will practically be lost to you in routine work. I very much doubt whether you can, after these years, adapt yourself to the process of "sawing wood." In any event, I doubt your success at it. On the other hand, there never was a time when there was so much interest in western activities and when there was such an opening for a man of your experience. It would seem to me the part of wisdom for you to grasp the opportunity and make use of the experience and friendships acquired by you and get into private or corporate work. I see no future for you in the Reclamation Service. It already has a large number of experienced engineers, many of whom are being furloughed on account of reduction of work. The same reduction affects the Chicago office to some extent, but the fact that most of our work in the future will be operation and maintenance will affect it still more.

Mr. PEPPER. Now, what did the Secretary—

The CHAIRMAN. Let me ask you a question there. You stated in that letter there that you have had to furlough many of your engineers. Then I understood from your testimony heretofore, and also from the testimony of Mr. Davis, that the service was being broken up by the Secretary and a good many of the engineers were resigning or threatening to resign. How do you account for your statement in connection with this that you say you had to furlough a good many?

Mr. NEWELL. The explanation is very simple. The men we are most apt to lose are the best men—the men whom we can least replace. Those are the men we are constantly afraid will go. There is a large number of younger engineers whom we are placing on furlough, because their particular duties are ceasing in connection with the finishing of large construction. At the same time operation and maintenance is starting up, and if possible we put these men on that operation and maintenance, although as a rule we demand a different type of men; but it is the best men, the men who are offered good situations outside, that we find most difficult to hold. The men on furlough are generally men who do not have experience or reputation to get outside work.

Senator SUTHERLAND. Let me ask you, Mr. Newell. You have read this paragraph of your letter. Did you mean to intimate to Mr. Perkins that he had misbehaved himself in any way in the service?

Mr. NEWELL. I had already written him to that effect, and this was a separate letter to show to him that there was very little hope of his staying there to build up a big Chicago office. To make it plain it may be said that Perkins during the last year had had the idea of building up the Chicago office to a great central purchasing office for the entire department and possibly for other departments.

Senator SUTHERLAND. You say that the probable inference to be drawn from that language is that Perkins ought to get out of the service for his own sake and not for the sake of the service?

Mr. NEWELL. I had already told him that he ought to get out for the sake of the service, and this was to show him that now was the time to get out.

Senator SUTHERLAND. The inference from that paragraph is to the effect that he should get out for his own sake?

Mr. NEWELL. Yes, sir; I had already written him a very strong letter covering my opinion of his conduct.

Mr. PEPPER. What were you trying to accomplish?

Mr. NEWELL. I had the belief at least that he would go and that it would relieve the service of the imputation of having a man in it who had received what many of the engineers regard as improper—

Mr. PEPPER. That is to say, you thought you could get him to resign?

Mr. NEWELL. I inferred that he would; yes, sir.

Mr. PEPPER. But so far as the action of the Secretary was concerned the report from Mr. Davis of the interview to which Mr. Davis has testified was to the effect that he was not unfavorable to Mr. Perkins?

Mr. NEWELL. He had instructed us not to do anything that would humiliate him, or words to that effect.

Mr. PEPPER. Make any reflection on him?

Mr. NEWELL. Make any reflection on him; yes, sir.

Mr. PEPPER. Now, what did Mr. Ballinger say to you apropos of your letter of December 4?

Mr. NEWELL. He was very much disturbed about it, and I explained to him that I thought that that was in exact accordance with his wishes and desires as expressed in his conversation with Davis and myself, that while he did not think Perkins had committed a crime yet it would be a great deal better if he went out of the service, and he said I should not have written such a letter. He did not say why, and as he was somewhat angry I did not pursue the subject any further.

Mr. PEPPER. Can you tell us how he dealt with the situation? Why do you say he was angry?

Mr. NEWELL. I do not know why he was angry.

Mr. PEPPER. I say, why do you say he was angry?

Mr. NEWELL. Because he was.

Mr. PEPPER. How did he show it?

Mr. NEWELL. He showed it by his expression and starting up from his chair, and I think it is a common expression of anger.

Mr. PEPPER. Was it anything that he said, apart from his manner?

Mr. NEWELL. He censured me for sending it, and I asked him what particular part of the letter was obnoxious, and he pointed out that paragraph. I wanted to read the paragraph and he said "no." I said "do you object to it?" He said "I do," and I asked him "shall I withdraw it," but he did not give any answer to that.

Mr. PEPPER. Did he say anything with respect to you yourself which you regarded as a censure?

Mr. NEWELL. Yes. I do not recall his words, but he implied very plainly by his words and actions that he disapproved of my sending that particular paragraph.

Mr. PEPPER. Well, did he make any particular reference to Doctor Lind at that time, or his report about the assignment of Lind to this work?

Mr. NEWELL. Yes. I told him that under his instructions Lind was out there for the purpose of reorganizing the office, of suggesting the reorganization, and he recognized that fact, that the office should be reorganized.

Mr. PEPPER. Did he say anything in regard to Lind or his disqualification from acting or anything of that sort at that time?

Mr. NEWELL. No, sir. He assumed that Lind was the proper man.
The CHAIRMAN. The committee will now take a recess until 2 o'clock.

(The committee accordingly at 12 o'clock and 45 minutes took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled after recess, at 2 o'clock p. m.

The CHAIRMAN. The committee will please come to order, and the case will proceed.

TESTIMONY OF F. H. NEWELL—Resumed.

Mr. PEPPER. I have only a very few questions, Mr. Chairman. You had described, I think, Mr. Newell, the interview with the Secretary subsequent to the writing by you of your letter of December 4 to Mr. Perkins. Thereafter, as appears from the record. Messrs. Evans and Callahan were detailed through Mr. Pierce to proceed to Chicago and investigate the office. That does appear, does it not, on page 1839 of the record?

Mr. NEWELL. Yes.

Mr. PEPPER. Am I right in understanding that on page 1841 appears a letter of December 13 in which you sent certain instructions to Doctor Lind?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. What happened subsequent to that, so far as you know; had you any further relation to the matter?

Mr. NEWELL. Doctor Lind returned to Washington, and I think Messrs. Callahan and Evans made their investigation and turned in their report to the department.

Mr. PEPPER. It appears on page 1841 that Doctor Lind had left Chicago before receiving your instructions to cooperate. Is that correct?

Mr. NEWELL. Yes, sir.

Mr. PEPPER. And thereafter Doctor Lind's report was forwarded to Evans?

Mr. NEWELL. Yes, sir; we forwarded all of the papers, I think, to him.

Mr. PEPPER. Which report was that? There were two reports of Doctor Lind's, were there not—one of December 15, dealing solely with the matters of organization, and then one of December 31?

Mr. NEWELL. Well, the one of December 15 was the only one in existence at that time.

Mr. PEPPER. I show you what purports to be a copy of such a report signed by Mr. Lind and addressed to the Director of the Reclamation Service, bearing date December 15, 1909, and ask whether that is the report in question? [Counsel hands report to witness.]

This, Mr. Chairman, comes up with the papers from the department.

The CHAIRMAN. That is not in the record now?

Mr. PEPPER. That is not in the record now, and I propose to offer to complete the record, unless Mr. Vertrees objects.

The CHAIRMAN. Is there any objection, Mr. Vertrees?

Mr. VERTREES. What is it?

Mr. PEPPER. That is the report of Doctor Lind of December 15.

Mr. VERTREES. There is no objection.

The CHAIRMAN. It is admitted.

Mr. NEWELL. Yes; that appears to be his report.

(The report is as follows:)

DECEMBER 15, 1909.

Mr. F. H. NEWELL,
Director U. S. Reclamation Service.

DEAR SIR: In compliance with your instructions of the third instant, directing me to proceed to Chicago and study conditions in our office located at that point, with a view to making suggestions as to economies that may be effected, etc., I have the honor to submit the following report:

I arrived in Chicago Monday, December 6, too late to do anything. On Tuesday morning I presented myself to Mr. Perkins's office, stated my business, and went to work.

I found the office in an utterly demoralized state. Because of certain changes it was understood were being considered and because of the several inspections that have recently been made, the entire office force was and is very nervous and hardly able to settle down to routine business, a condition of affairs that should be remedied at once. Some one with ability and authority to make a complete reorganization of the office force should be instructed to take charge immediately and bring into effect such changes as may be necessary at the earliest practicable date, and when the changes have been made the clerical force should be given to understand that thereafter they need not expect to be disturbed so long as they attend to their duties. I believe this to be imperative.

Mr. Huffer reported on the Chicago office November 18th that it was spending about \$29,760 annually from the reclamation fund for salaries. He stated that at least one-third of this expense could be saved if the office were reorganized and put on a practical business basis, but after further investigation of this matter I find that the expense can be cut down to even a greater extent. Certainly the expense can eventually be reduced to \$16,260 per annum, and much increase the efficiency of the force.

As the Chicago office is now conducted, Mr. Perkins is its nominal head. Mr. Kirksey, who has charge of the purchasing section, signs his own mail and conducts the affairs of his section altogether outside of the knowledge or assistance of Mr. Perkins.

Mr. Dick, who has charge of the transportation section, conducts the affairs of his section in practically the same manner, leaving Mr. Perkins without any clearly defined duties to perform in connection with the work for which the Chicago office was organized. This is, to say the least of it, very bad organization, and even if Mr.

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Perkins were capable of directing the activities of this section, which he assuredly not, there would still be no good purpose served in keeping up such an organization. The office is entirely too small for it, and the present arrangement does not result in educating understudies who might eventually take charge in event of the chief's illness or resignation. The organization, as I left it in Chicago, is arranged as follows:

Name.	Classification.	Duties.	Salary.
ADMINISTRATIVE.			
E. T. Perkins.....	Engineer in charge.....	No clearly defined duties.....	\$3.75
Mrs. K. L. Walker.....	Stenographer.....	Secretary to engineer in charge.....	1.25
SETTLEMENT.			
J. C. Waite.....	Clerk.....	Settlement agent.....	1.75
D. S. Sprague.....	Junior clerk.....	Secretary to settlement agent.....	.80
TRANSPORTATION.			
S. W. Dick.....	Transportation agent.....	In general charge of the office.....	2.25
C. E. Harris.....	Senior clerk.....	In charge of auditing freight accounts, etc.....	1.75
J. H. Brown.....	Rate clerk.....	Checks freight accounts, etc.....	1.25
J. A. Moss.....	do.....	do.....	1.25
James Clouston.....	do.....	do.....	.75
C. E. LeQuam.....	Stenographer and clerk.....	Stenographer and clerk.....	1.25
Mary Theaker.....	Stenographer.....	Stenographer.....	.75
PURCHASING.			
F. W. Kirksey.....	Clerk.....	Purchasing agent.....	1.60
H. P. Lehman.....	do.....	Assistant purchasing agent.....	1.25
C. E. Pleasance.....	do.....	Forwarding clerk.....	.75
R. E. White.....	Clerk and typewriter.....	Writes up advertisements, etc.....	.75
C. C. Hellman.....	do.....	Handles requisitions, etc.....	1.00
J. G. Yates.....	Clerk and stenographer.....	Checks vouchers, etc.....	1.25
A. P. Malone.....	do.....	Takes dictation of purchasing agent, etc.....	1.00
M. L. Pascoe.....	do.....	File clerk, etc.....	.75

In the interest of efficiency and economy I propose an organization such as the following:

1 general purchasing agent.....	\$2.40
1 chief clerk.....	2.25
2 rate clerks, at \$1,200.....	2.40
1 clerk to act as rate clerk and forwarding clerk.....	1.25
3 stenographers to work for the transportation and purchasing sections when necessary, 1 at \$1,080, 2 at \$1,020.....	3.15
1 clerk for files.....	1.00
1 voucher clerk and stenographer.....	1.00
2 clerks, details of purchasing, \$1,020 and \$1,200.....	2.25
1 office boy.....	.50
Total.....	16.25

This organization is based upon the present needs of the service in Chicago, provides for no increases in salaries, but places each clerk on exactly the same pay scale as those performing just such duties in commercial concerns. Even should it be desirable to increase a salary now and then, or even should it ever become desirable to employ an additional clerk, I am quite certain that the salary expense could easily be kept down to within the \$20,000 mark, which would be a saving of approximately \$10,000 per annum, but for the present at least \$16,260 would be ample for all clerical purposes. This cuts the clerical expense down 45 per cent or even more than Mr. Huffer estimated. It must be borne in mind, however, that this does away with publicity work in Chicago. You will note that the organization I propose provides for one reduction in pay and no promotions. It would take approximately ninety days to bring about just such an organization, but the right man can certainly effect it. As the Chicago office is now arranged there is one chief for the entire organization, two chiefs for the transportation section, consisting in all of seven clerks, and one chief for the purchasing section, who has seven clerks under him. This is, of course, very expensive organization and would not be tolerated in a commercial house. The organization mentioned above provides first of all for a chief

general purchasing agent, who will keep in close touch with all the work of his office and, having a knowledge of all details, inspire his clerks with confidence and respect. This is something the Chicago office has long needed and what it must ultimately have if good results are to be obtained.

This man should also be familiar with the physical conditions in the field, possess the confidence of the engineers located there and in your office, whom he ought to know personally. He should have a good address and should have had good all around practical and commercial training in this service. No other man can make a success of it. It goes without saying that he should be tactful and be a first class administrative officer. He should sign his own mail, be thoroughly in touch with everything that goes on in his office, know each man personally, and what each one can or cannot do, so that he may intelligently transfer his clerks from one position to another, in order that his office may produce understudies instead of specialists as is now the case. He should have his desk in the large room now occupied by Mr. Kirksey's force and move the entire force in with him. It would probably be necessary for him to screen a portion of that room so that he may enjoy a little privacy, should occasion require. The chief clerk should be an understudy to the general purchasing agent and should be in charge of the office during the absence of that officer. He would assist the general purchasing agent in carrying out the details of certain matters he might not have to look into personally, and perform routine duties in connection with the purchasing and transportation. I believe now that no other high-priced clerk will be necessary in the office. Two good men holding positions such as I have mentioned could certainly direct all the activities of the 10 clerks and 1 office boy above mentioned.

There are other reasons for consolidating the two sections. As it is now, a clerk working for the purchasing section does not learn anything in regard to transportation work. This is all wrong. Certainly the transportation work should be subordinate to the purchasing work, for after the purchase has been made the next step is to arrange for its transportation. The transportation work is merely an adjunct to the purchasing work, as the bulk of the transportation work is the auditing of bills of lading issued by Chicago and field officers on purchases made. At present when a clerk is not busy in the purchasing work he can not be used in the transportation work without friction, so he does nothing. The same thing is true in the transportation section. This generally results in the employment of extra clerks and brings out anything else but a friendly spirit of rivalry, but is bound to cause jealousy and friction. Were these sections consolidated the clerks could be switched about from one place to another, would not be idle a moment, and would be learning the entire business—purchasing, transportation, etc. They would take even more interest in their work, and better results would be obtained in every way. There is nothing wonderful in the carrying out of our purchasing and transportation work. A good headed business man with proper experience could easily direct the entire work. As a matter of fact, the purchasing work requires much more ability and experience than the transportation work does, for the transportation man after he receives his bills of lading has only his tariff sheets, contracts, etc., to consult in order to finally settle the account, which is more like applying the principles of the multiplication table than anything else I can think of.

Another good purpose would be served by consolidating these sections and moving them all in one room. Just now 3 separate files are kept. This means a great deal of running about and transferring of papers from one file or room to another. All this should be done away with. The other rooms in the office can be used for the storage of various articles, providing a place for field engineers and others to attend to their correspondence or to hold conferences, or similar purposes. Of course, just now the work of the service is at a low ebb, and if all signs are true it will not be larger for some time, but it would be well to hold on to these rooms should our work ever become so great that they may be needed.

Beyond any question of a doubt, with the right man at the head of this office, and with the organization as I propose it, Mr. Dick could let two of his clerks go and so could Mr. Kirksey, and in addition Mr. Perkins and his stenographer need not be kept.

It would at present be impossible to give the names of all employees to be retained or dismissed. That could only be determined after they had been moved into one room and the versatility and the adaptability of each one tried out. This will take a few weeks in some cases, longer in others. It goes without saying, however, that whoever is placed in charge of the entire force will recommend no dismissals at once, but take over the entire force as it now is, and give each clerk a square deal of fair trial before making his final decision as to his or her efficiency.

In outlining this organization, I would strongly urge that Mr. Kirksey be made the general purchasing agent and Mr. Dick the chief clerk. Mr. Kirksey is one of the best

all around clerical men we have in the service. He has had wide experience in the field, possesses the confidence and respect of the field engineers, is tactful, firm, and fair, and does not play favorites. He is not easily stampeded and is a splendid administrative officer. He has the work of the Chicago office at his finger's end, and I know of no other man to fill this important place.

As you probably know, our best men are fast leaving the service on account of unsettled conditions, and even if Mr. Kirksey were not the best man for the place, which he assuredly is, I know of no one else to suggest for the position. He has made good in every place he has been assigned to.

Mr. Dick would make a good subordinate under Mr. Kirksey. He has not had sufficient commercial experience to fill this place, nor has he ever had field experience in this service. I believe he will gain wide experience under Mr. Kirksey, and have opportunities of development that he would get nowhere else.

I have talked over with Mr. Kirksey and Mr. Dick the matter of consolidating the Chicago office force and both agree with me that it is the only thing to do, and furthermore that when it is done many other economies not here mentioned and which may be of minor importance may be brought about.

The most important thing to make clear in this report is that Mr. Perkins should not be retained at the head of this proposed organization. Anyone I can think of would be a better man to fill a clerical position in this service than Mr. Perkins. He has never had clerical experience, has never shown administrative ability, and is too impulsive. It seems to be impossible for him to grasp an idea that carries with it the thought of economy. He is not an economical man. One of his main ideas since he has had charge of the Chicago office has been to surround himself with as many clerks as possible, reach out for more authority for his office, and to increase rather than to decrease expenses.

Investigation demonstrates the fact that he knows nothing of the details of transactions being carried on in his office, and because of this fact fails to inspire his clerks with confidence and respect. He talks well in general terms, but when pinned down to facts it has been found that he has a very incomplete knowledge of detail transactions. I do not believe Mr. Perkins would ever adapt himself to routine office work, and in fact his training has been such that it could hardly be expected of him. I learn until he came into the Reclamation Service he had had some experience in a minor branch of engineering—that of topographer—but the Chicago office does not require the services of an engineer of any kind. What is needed there is a good all-around business man.

It is generally known to the field officers that through Mr. Perkins' lack of tact and ordinary judgment he has been involved in so many controversies with engineers in the field that for a while some of them refused to do business with his office at all. I believe now that Mr. Perkins would be placing very few orders for the various engineers had not Mr. Kirksey been sent to Chicago to take charge of this work, and as a result I hear of no further complaints in regard to the purchases and forwarding of material, and this work is carried on absolutely without reference to him. There is little or no loyalty to Mr. Perkins in the Chicago office.

I believe Mr. Perkins to be temperamentally unfit to hold his present position. What I have said about Mr. Perkins' ability is not new. It is known to practically every one in the service. The main trouble in Chicago, I repeat, is Mr. Perkins, and as long as he stays there no better results can be hoped for or looked for.

The facts are that, exclusive of a few railroad contracts completed, and which if necessity would have been completed in any event by any one possessing the necessary authority, results for transportation work as well as for purchasing work are because of the efforts of the transportation and purchasing agents, whose services could have been dispensed with years ago and their duties carried on by a good chief clerk, provided, of course, Mr. Perkins had been the proper administrative officer with the reins of his office in his hand. To illustrate this, I may add that all purchases for the current year, aggregating approximately \$500,000, have been handled absolutely without reference to him, and during that period the records of his office fail to show that he has written a single letter or considered a single proposition in connection with this work. This may be partially accounted for by his previous failures to make good, resulting in complaints being made by the field offices, which resulted in your turning over this work to Mr. Kirksey. It serves the purpose, notwithstanding, to demonstrate beyond question to just what extent he is responsible for the carrying on of the work by his office.

Further investigation develops the fact that, aside from the publicity work, if called upon, it would be an impossibility for Mr. Perkins to show you or any other disinterested person how he can be in any way identified with the actual work of his office, and naturally it goes without saying that an efficient officer would be felt throughout all of these transactions.

I say what I have without any feeling whatever. I have always liked Mr. Perkins, while I never had any respect for his ability. He has always treated me in the most courteous manner, except on the occasion of my last visit to Chicago, and that I am willing to let pass. I am under personal obligations to him for a number of courtesies and shall not soon forget them, but in spite of all this, I say, because my duty requires it, that the Chicago office is suffering from extravagance and poor organization, and all of this is because of Mr. Perkins' lack of administrative ability. This office has been for several years the one sore spot in the Reclamation Service organization, and until Mr. Perkins is removed from office better results need not be looked for. While in Chicago I went into the details of all the work performed by every clerk in the office, save the work under Mr. Waite. I make no comment in regard to that.

I completed my work in Chicago on December 12 and left at once for Washington. Respectfully submitted.

Chief Fiscal Officer.

The CHAIRMAN. What is the date of that report?

Mr. PEPPER. December 15, Mr. Chairman.

The CHAIRMAN. There is one of December 31 in the record, is there not?

Mr. PEPPER. Yes; that is the other one.

Now, Mr. Newell, it appears from the record that at a subsequent date, to wit, January 14, the Secretary sent to you the letter appearing on page 1843 of the testimony, in which he substantially adopts the conclusions of the Evans and Callahan report and makes orders in conformity therewith. I ask what conferences, if any, you had with the Secretary, or he with you, in the interval between the interview that you described before adjournment and the receipt by you of this communication of January 14.

Mr. NEWELL. I had no information concerning the report; it was sent to me on January 14, with the letter printed on page 1843.

Mr. PEPPER. In other words, upon the coming in to the Secretary of the Evans and Callahan report, he took, so far as you know, what action in the way of conferring with the officers of the Reclamation Service?

Mr. NEWELL. He did not confer with us at all.

Mr. PEPPER. And was the receipt of that communication of January 14 the first notice that you received of the action of the Secretary in response thereto?

Mr. NEWELL. That was the first knowledge we had of the report, or of its contents, or of any action on it.

Mr. PEPPER. Was action by the Secretary of the Interior, in a matter of this sort, without consultation or conference with the director or with the chief engineer, in accord with the custom or traditions of the service?

Mr. NEWELL. It was very unusual to have any report made or acted upon without consulting the director.

Mr. PEPPER. In point of fact, in a matter of this seriousness, was this or was it not the first time when such a thing had occurred?

Mr. NEWELL. The first time within my knowledge.

Mr. PEPPER. I have no more questions.

Mr. VERTREES. Mr. Newell, do I understand from what you have said that you feel that the Secretary of the Interior did not advise with or consult you as much as you think he ought to have done?

Mr. NEWELL. Substantially; yes. He has not advised or consulted with the director as would be best for the work.

Mr. VERTREES. So you feel that in that respect either he was somewhat derelict of duty or you were slighted—one or the other; maybe both?

Mr. NEWELL. I should say that he did not perform his full duty.

Mr. VERTREES. In that he did not consult you as fully as you think he ought to have done?

Mr. NEWELL. In that he did not get the full information he should have had.

Mr. VERTREES. By consulting you?

Mr. NEWELL. By consulting me and other men.

Mr. VERTREES. You do not know to what extent he consulted others?

Mr. NEWELL. To a large extent, yes. I know of his consultations with Mr. Davis and others.

Mr. VERTREES. He did consult Mr. Davis quite frequently, did he not?

Mr. NEWELL. Quite frequently, yes.

Mr. VERTREES. And quite fully?

Mr. NEWELL. Not fully.

Mr. VERTREES. Did he not request him to be near him, in order that he might consult him?

Mr. NEWELL. He instructed him to take a desk down there.

Mr. VERTREES. When did you learn he was pursuing that course, namely, that he was consulting freely with Mr. Davis, when at the same time he was omitting to consult with you as freely as you thought he ought to?

Mr. NEWELL. I did not say that he consulted freely and frequently with Mr. Davis. Mr. Davis had been told what he wished done, but that is not what I should call consultation.

Mr. VERTREES. Well, we leave out the word "frequently," Mr. Newell, and I will put this question to you: When did you first discover that the Secretary appeared to be consulting with Mr. Davis, while at the same time he was omitting to consult you as freely as you thought he ought to?

Mr. NEWELL. Mr. Davis, in that interview of, I think, March 17, stated that it was the desire of the Secretary—the Secretary desired to consult Mr. Davis rather than the director.

Mr. VERTREES. So you did understand it at a very early date, and from Mr. Davis?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. He told you?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. And so, as I now gather from you, through Mr. Davis you did at a very early date understand that it was the desire of the Secretary to consult Mr. Davis rather than you?

Mr. NEWELL. Take up matters of business with Mr. Davis; yes.

Mr. VERTREES. With the result that you did not then feel at liberty to obtrude yourself upon him?

Mr. NEWELL. I could not agree to that. I did go to him as often as I had opportunity to bring matters to him.

Mr. VERTREES. But with the feeling that he preferred the other gentleman to come?

Mr. NEWELL. That was my understanding.

Mr. VERTREES. Did you at any time learn, too, that the Secretary felt that you were not precisely the man for the place; that while you

had capacity in many respects he thought there were some elements in which you were deficient—administrative capacity and the like?

Mr. NEWELL. In this interview of March 17 Mr. Davis stated that the Secretary had made some reference to me, but Mr. Davis did not explain.

Mr. VERTREES. Yes. I did not ask you that. I asked you when you first got the information that that was the Secretary's view or estimate of you?

Mr. NEWELL. I am not sure as to what his estimate or view was, but that inference in my mind was that the Secretary preferred to take these matters up with Mr. Davis—whether it was my defects, or Davis's—

Mr. VERTREES. We have passed from that. I am not saying that you were a man of defects; I am only getting on the Secretary's view. You do now understand that the Secretary did hold that view, that you were not the man, as he thought, who ought to be the Director of the Reclamation Service?

Mr. NEWELL. I can not agree with that; I do not know that he did hold that view.

Mr. VERTREES. Have you read Mr. Davis's testimony in this case?

Mr. NEWELL. I have gone through it; yes, sir.

Mr. VERTREES. Well, then, you have read it, you mean by that, do you not?

Mr. NEWELL. I have gone through the salient points; I have not read it carefully.

Mr. VERTREES. Did you read it sufficiently to find out that Mr. Davis stated to this committee in this testimony that the Secretary had so expressed himself to him, and at a very early date?

Mr. NEWELL. May I ask the page where that is?

Mr. VERTREES. I do not know what page it is. We are not on the page now. I asked you whether you read it, whether you got it from any page?

Mr. NEWELL. I am not clear that I got that conception, as you put it.

Mr. VERTREES. Well, what conception did you get as to the attitude of the Secretary toward you? I am trying to get your frame of mind, and what you understood the Secretary's frame of mind to be.

Mr. NEWELL. I have not a very clear idea of the Secretary's frame of mind.

Mr. VERTREES. Even at this time?

Mr. NEWELL. No, sir; not at this time.

Mr. VERTREES. I mean, toward you.

Mr. NEWELL. No.

Mr. VERTREES. And you would not like to say that you have had information that the Secretary was contemplating at any time substituting some one in your place?

Mr. NEWELL. I have seen that in the newspaper clippings.

Mr. VERTREES. Well, you seem to have attached right smart importance to these newspaper clippings and you brought a number of them here. Now, predicating upon that, I ask you this question: When, if ever, did you get the notion in your mind that Secretary Ballinger felt that some one else should have the place of director—instead of you?

Mr. NEWELL. I am not clear that he had that in his mind, excepting, as I have stated, that these clippings have stated it, and they were written by men who presumably could get access to the Secretary.

Mr. VERTREES. I think that question can be more simply answered. Do I understand you to say that even now it is not clear in your mind that such was ever the Secretary's view?

Mr. NEWELL. I could not swear to it, whatever his view might have been.

Mr. VERTREES. I know you can not swear what his views are. I am not asking you what his views are, but what your understanding—your understanding of his views are?

Mr. NEWELL. I have no clear understanding as to what his views are.

Mr. VERTREES. Well, then, that answers me. You haven't any, and do not wish to express any opinion on that point?

Mr. NEWELL. I won't say I can not express an opinion.

Mr. VERTREES. I am asking you to express one. What I want you to state to the committee is, when it first dawned on you, whether erroneously or properly, that Mr. Ballinger's view was that it was best for the service that another man be made Director of the Reclamation Service?

Mr. NEWELL. Mr. Chairman, I can not say that that has dawned on me at any particular time, or that that is his view at present.

Mr. VERTREES. That answers my question.

Mr. NEWELL. If that is his sentiment, of course he can act on it.

Mr. VERTREES. You have no information then as to whether that is his view or not, as I understand you?

Mr. NEWELL. He has not shown it by his actions.

Mr. VERTREES. Now, I did not ask you what he had shown. I am asking you about your mental concepts and notions. I want to get your views. Do you wish to tell this committee here to-day that so far as you are concerned you have no idea as to the estimate the Secretary puts upon you as Director of the Reclamation Service?

Mr. NEWELL. Why, Mr. Chairman, I am very much puzzled on that. I think I have tried to cover that condition as clearly as I can.

Mr. VERTREES. It may be that I am in error about it and have asked too many questions. I will try once more, because I wish to get the state of mind and feeling between you two gentlemen. I want you to tell this committee whether or not you believe, or have the impression, that the Secretary holds to the opinion that it would be to the interest of the service that some one else other than you should be Director of the Reclamation Service?

Mr. NEWELL. Why, Mr. Chairman, I am very much in suspense on that as to what his attitude may be.

Mr. VERTREES. Back at this time when you say "early," as early as June, 1909, when Mr. Davis informed you that it was the desire of the Secretary that he, Davis, the chief of the engineers, should confer and consult with him, rather than with you, the Director of the Reclamation Service, what idea did you get from that as to the Secretary's attitude toward you?

Mr. NEWELL. I can not say that I had a very clear idea as to what was his intent.

Mr. VERTREES. Haven't you got any clear idea now on that point?

Mr. NEWELL. Not clear; no.

Mr. VERTREES. Well, have you got an obscure sort of idea on that point?

Mr. NEWELL. Why, Mr. Chairman, I think the ideas are pretty well developed. I am very much puzzled, as I have stated, as to the attitude of the Secretary of the Interior toward the Director of the Reclamation Service.

Mr. VERTREES. Are you puzzled as to the attitude of the Director of the Reclamation Service toward the Secretary?

Mr. NEWELL. Not in the slightest.

Mr. VERTREES. Now, what is that?

Mr. NEWELL. It is to do his duty toward the Secretary and toward the work, and to bring everything possible to his attention, and to have the Secretary's approval to everything that is essential to the good of the service.

Mr. VERTREES. Did you have the idea that he meant to displace you with Mr. Davis at any time?

Mr. NEWELL. I can not say that I did.

Mr. VERTREES. Can you say that you did not?

Mr. NEWELL. I can not say that I did not, although that is one of a number of contingencies that may have occurred to me.

Senator FLINT. Let me ask you this question: Have statements been made to you by any person that Mr. Ballinger had stated that he would remove you?

Mr. NEWELL. Yes, sir.

Senator FLINT. Who?

Mr. NEWELL. Mr. Davis intimated that he thought that was within the mind of the Secretary.

Senator FLINT. Anyone else?

Mr. NEWELL. I do not recall anyone else.

Mr. VERTREES. When was that conversation had, Mr. Newell, between you and the Secretary in which you brought to his attention the statements of certain newspaper correspondents whose names you have given here?

Mr. NEWELL. The first was in the interview of March 18, when I brought up that matter of the Breckons's statement, and then subsequently in June, after I returned from the field, and I think again some time after my return to the field in the fall.

Mr. VERTREES. Did you save up these newspaper excerpts, or were they furnished to you by some one?

Mr. NEWELL. They were placed on my desk by people in my office.

Mr. VERTREES. These things are preserved there—criticisms and commendations—things that appear in the papers both ways?

Mr. NEWELL. We keep quite a number of clippings; everything that bears upon reclamation I think comes to our office.

Mr. VERTREES. You try to get it all?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. Now, in regard to this Perkins matter that has been brought up here before this committee. You have stated a good deal about that. Did you suggest that as a matter to be brought forward, or did some one else do it?

Mr. NEWELL. I think I did not.

Mr. VERTREES. Who do you think did?

Mr. NEWELL. Mr. Davis was very much concerned with that, and I am quite sure that he spoke about it.

Mr. VERTREES. Now when—how far back?

Mr. NEWELL. He was very much disturbed at the letter or instructions to Doctor Lind that nothing should be done that would reflect on Perkins.

Mr. VERTREES. I do not mean that. I mean presenting it to this committee, what had you to do with bringing it forward here?

Mr. NEWELL. I had nothing to do with that.

Mr. VERTREES. Did Mr. Davis?

Mr. NEWELL. Presumably.

Mr. VERTREES. Now, when you say "presumably," do you mean by that that you are informed that he did?

Mr. NEWELL. No; I am not informed on the subject.

Mr. VERTREES. He gave you no information on that subject?

Mr. NEWELL. No, sir.

Mr. VERTREES. What is there in that Perkins business that you think is of a character that justifies its being brought up here against Mr. Secretary Ballinger?

Mr. NEWELL. Why, I have not suggested bringing it up, and I have simply explained where I regarded it as a very improper action on the part of Mr. Perkins, and my regret that the Secretary should apparently have sustained him in that.

Mr. VERTREES. You did not mean to reflect on the Secretary personally for sustaining him, did you?

Mr. NEWELL. The matter was brought up without my knowledge.

Mr. VERTREES. I am not on your knowledge. I am on your intent now; that is what I want to get at now. I want you to tell the committee what there is in that transaction, if anything, which reflects upon the conduct of the Secretary of the Interior?

Mr. NEWELL. The feature which I see in it that is unfortunate is first giving instructions to Mr. Perkins without our knowledge, letting him go into a line of work which was not authorized, and then condoning what I regard as a highly dilatory ethical fault.

Mr. VERTREES. Well, is not this a fact with reference to that matter, that what we have known as the black-tent lectures, and what we have known as the lectures delivered by Mr. Perkins, for which he received this compensation, were entirely distinct things?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. Absolutely so? And had no relation to each other at all? You understand it that way, do you not?

Mr. NEWELL. They were distinct. I do not know that they had any relation.

Mr. VERTREES. If they had any, you do not know it?

Mr. NEWELL. I think Mr. Perkins was using similar material to that which he was using in the black-tent lectures.

Senator ROOT. Mr. Newell, you used the expression, "not authorized;" what do you mean by that? Do you mean that the black-tent lectures were authorized by any statute?

Mr. NEWELL. Not authorized by statute and not authorized by the action of the office; that is to say, Mr. Perkins starts up a line of work which, when I learn of it subsequently, is such that I should not consider wise or proper.

Senator ROOT. My question related to black tent lectures; how were they authorized?

Mr. NEWELL. They were not authorized at all. They are an operation organized by a railroad company in which Mr Perkins acted as agent to direct the work, the company paying the expenses.

Senator ROOT. They had your approval?

Mr. NEWELL. No, sir.

Senator ROOT. The black tent?

Mr. NEWELL. No, sir.

Senator ROOT. Who did authorize that or approve that?

Mr. NEWELL. Mr. Perkins asserts that the Secretary of the Interior did in his conversation which is recited in that memorandum of Waite's on May 6, I think is the date.

Senator ROOT. That is the black-tent lectures?

Mr. NEWELL. That is the black-tent lectures.

Mr. VERTREES. Now, Mr. Newell, I first want to get before this committee the statement that what we know as the black-tent publicity campaign was one thing and the lectures for which Mr. Perkins received compensation, the \$500, the \$300, and the \$200, was a different thing. That is true, is it not?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. And did not Mr. Perkins write you in a letter which is found on page 1839 of the record under date of December 6, 1909, which, among other things, contains this:

These two matters—

Meaning the two matters to which I have just referred—

have had no connection whatsoever, and this fact is distinctly so stated in letters of authorization from the Union Pacific officials to their disbursing agents to make such payments.

Did he not write you that?

Mr. NEWELL. That is his statement; yes.

Mr. VERTREES. Is not that statement correct, so far as you know, Mr. Newell?

Mr. NEWELL. I have no knowledge except as to the first part, that these two matters had no connection and were not necessarily connected.

Mr. VERTREES. Yes; very well. Now, then, you wrote him for his authority to receive compensation for the lectures he had delivered and for which he was receiving compensation, did you not?

Mr. NEWELL. In 1908 I authorized him—

Mr. VERTREES. I did not ask you that. I asked you if you did not write him to know by what authority he did this—write him on November 17?

Mr. NEWELL. That was Mr. Davis's letter.

Mr. VERTREES. Yes. Now, in this same letter, in reply to that of December 6, 1909, did not Mr. Perkins say to you, the Director of the United States Reclamation Service:

That in reply I desire to call to your attention my letter to you of February 14, 1908, and your answer of February 24, 1908, in which specific authority is given me to deliver lectures and receive payment therefor, provided that it is done in my own time and does not interfere with the daily routine of the office.

Mr. NEWELL. That is correct.

Mr. VERTREES. And further:

Acting under this authority, after several months of negotiations, I entered into an agreement in August of this year with the Union Pacific Railroad to deliver in Chicago and vicinity six lectures per month, on "Reclamation of arid lands," under which I was to arrange for hall, lantern, and operator, and publicity, and receive \$50 for each lecture so delivered.

Now, did Mr. Perkins ever claim that he had gotten authority from any Secretary to deliver these lectures, and did he not claim that it was you from whom he had gotten that authority?

Mr. NEWELL. Yes, sir; he was authorized to deliver lectures and receive compensation, but not from the railroad companies.

Mr. VERTREES. Wait a moment. Isn't the thing that you criticised him for the receiving of this compensation for these lectures that he delivered and not the black-tent lectures?

Mr. NEWELL. It was for receiving compensation from the railroad companies.

Mr. VERTREES. Wait a moment. We will get to the railroad part of it presently. The point I want your mind on and to which I wish an answer, Mr. Newell, is the criticism that you passed on him relative to his receiving compensation for these lectures and not for his connection with the black-tent campaign fund.

Mr. NEWELL. Yes, sir; I criticised him on the subject of the black tent, for going into it without notifying me or letting my office know of the fact that he had gone into it.

Mr. VERTREES. Very well, then I understand you that your only criticism of him, so far as the black-tent campaign was concerned, was for going into it with the Secretary without informing you?

Mr. NEWELL. It was for going into it without informing us, and for not informing us in his monthly reports, as he should have done.

Mr. VERTREES. Yes; but that is just two ways of saying twice that he did not inform you. The point I am on is that it was for not giving you information with respect to that that you criticised him there, is that correct?

Mr. NEWELL. That is true.

Mr. VERTREES. Not the criticisms for improperly receiving money for delivering lectures, for which he received compensation, is restricted to these other lectures which he delivered in and around Chicago, for which he received money from the railroad; is that right?

Mr. NEWELL. Yes, sir; that is correct.

Mr. VERTREES. Now, we have got those two things separate and we understand them. Isn't it true his authority for delivering these lectures and receiving compensation for delivering them he claims to have gotten from you and not from the Secretary at all?

Mr. NEWELL. I authorized him to deliver lectures and receive compensation.

Mr. VERTREES. Just wait a moment. We will get along if you will answer my questions. I am asking you now as to his claim. Perkins's claim, and I will restate it so there will be no difficulty about it. Did not Mr. Perkins claim that his authority to deliver these lectures and receive compensation therefor was gotten from you?

Mr. NEWELL. That was his claim; yes, sir.

Mr. VERTREES. He did not claim that he had gotten authority to do that from the Secretary at all?

Mr. NEWELL. I am not so certain about that. I think he might have stated that he talked with the Secretary about it. Now, that you recall it to my mind, I am very sure that he did.

Mr. VERTREES. But when called upon for his authority did not he give you as his authority and not the Secretary?

Mr. NEWELL. He did.

Mr. VERTREES. So now we understand that.

Now, a letter was given in evidence to-day, dated February 14, 1908—a letter of Mr. Perkins to the director.

The CHAIRMAN. Is that already in?

Mr. VERTREES. No, sir; this was the letter that was not yet printed. I wish to read some extracts from that letter.

Senator ROOT. Have you proven it or identified it in any way?

Mr. PEPPER. I introduced that this morning.

Mr. VERTREES. Yes, sir; they offered it this morning. It has not been printed yet. He says to you in that letter [reading]:

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Chicago, February 14, 1908.

DIRECTOR, U. S. RECLAMATION SERVICE,
Washington, D. C.

SIR: In reply please refer to File 11-A2.

In accordance with your personal direction I have been delivering various lectures in Chicago and the immediate vicinity on the subject of the Reclamation Service. At the present time I am lecturing every Friday evening under the auspices of the Chicago Daily News; on the 19th of this month I will lecture at Ames and Des Moines, Iowa; on March 2, I am to speak to one of the men's clubs of the city.

While doing this work I have had several requests from various organizations which are willing to pay for my services while lecturing on this subject or similar subjects. For some time I have had in mind preparing a series of illustrated lectures dealing with the resources of this country and their conservation. This series of lectures would probably deal with the work of the Reclamation Service, the Forestry Service, the Agricultural Department, the army and navy, and of the country at large, the subject to be called "Our Own Country." I spoke of this matter to the Secretary, Mr. C. Garfield, and as presented to him, he approved of my doing this work and receiving adequate compensation. The point he impressed upon me was that it must be done in my own time, and that I must not use material which had not yet been made public by the Government.

Before taking any further steps in this matter I would request your authorization to proceed along the lines approved of by the Secretary.

Respectfully,

E. T. PERKINS, Engineer in Charge.

Mr. VERTREES. You received that latter?

Mr. NEWELL. I did.

Mr. VERTREES. Now did you, in reply to that letter, asking authorization to receive adequate compensation for that system of lectures, reply on the 24th of February, 1908, approving of it and authorizing it?

Mr. NEWELL. I did.

Mr. VERTREES. And did not Mr. Perkins from that time on claim, right or wrong, that that was his authority for delivering those lectures and receiving compensation?

Mr. NEWELL. There is no question as to his authority for delivering lectures and receiving compensation. But the point is he received it from a company secretly with whom he was doing official business. We do not deny the authorization or propriety of delivering lectures and receiving compensation.

Mr. VERTREES. Now, is it not a fact that this man Lind that you sent to investigate Perkins was personally hostile to Mr. Perkins?

Mr. NEWELL. No, sir.

Mr. VERTREES. Hasn't Mr. Davis so stated to this committee that he was?

Mr. NEWELL. I do not recall that he did.

Mr. VERTREES. Now, when his report came in did not Secretary Lindlinger insist that such was the case and that Mr. Lind's mental

condition was not such as that he thought he was the man to make a report?

Mr. NEWELL. I think that he did not.

Mr. VERTREES. You say that you think he did not. Do you mean by that that he did not to you?

Mr. NEWELL. He did not to me. It was only after Mr. Perkins came on and talked to Secretary Ballinger that he ordered the other men to go out there.

Mr. VERTREES. I am not on the ordering of the other men; I am going to get to the other men presently. Now, then, as a result of that did not Secretary Ballinger direct two of the best men in the auditing department to go to Chicago and investigate Mr. Perkins, his office, and his affairs, and to report?

Mr. NEWELL. He instructed two men to go out; yes, sir.

Mr. VERTREES. And were not you conferred with and consulted by Mr. Ucker and by Mr. Evans and Mr. Callahan, before going, as to that investigation and its nature and what should be done?

Mr. NEWELL. We talked very freely over the conditions and described them to Messrs. Evans and Callahan.

Mr. VERTREES. Were not Evans and Callahan the two men who were to go?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. And Mr. Ucker was the man who directed it to be done?

Mr. NEWELL. He was the chief clerk.

Mr. VERTREES. Did he not there, in your presence, give them the fullest authority and direction to investigate in every particular as to the management of the office, as to whether it needed reorganization, and as to the personal conduct or misconduct of Mr. Perkins, and report everything in connection with the office?

Mr. NEWELL. I am not sure that he gave any instructions in my presence. We talked over the conditions, but the instructions, I think, were discussed later.

Mr. VERTREES. I will put it in this form if you prefer: Were not the conditions at Chicago, in Mr. Perkins's office, fully discussed amongst you with a view to ascertaining and determining what should be done in the matter of investigation?

Mr. NEWELL. We gave Messrs. Evans and Callahan such information as we had, and suggestions.

Mr. VERTREES. You were called upon to do that—you were expected to do it?

Mr. NEWELL. We were expected to.

Mr. VERTREES. You did give them such information as you had in regard to it?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. You, at that time, had the report of Mr. Huffer did you not?

Mr. NEWELL. Yes, sir; the report of November—

Mr. VERTREES. The first one?

Mr. NEWELL. Yes, sir; I had his first report.

Mr. VERTREES. Did you give that to them?

Mr. NEWELL. I think we did; I think they had it.

Mr. VERTREES. Just think again, now, and see if this is not an accurate statement, that you did not give it to them and did not mention it even?

Mr. NEWELL. We mentioned it because we described what Huffer found there; in fact, the whole thing was postulated on the Huffer report, which described those conditions.

Mr. VERTREES. Now, Messrs. Evans and Callahan went on and made, subsequently, under date of December 27, 1909, a most elaborate report, did they not, a report which is found on page 45 of the record? Do you not know that is true, Mr. Newell?

Mr. NEWELL. They made a report; yes, sir; beginning on page 45, I think.

Mr. VERTREES. And concluding where—concluding on page 1849?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. A report in detail with respect to everything. I will ask you if, among other things, you do not know that they reported with respect to Mr. Perkins's management, this [reading, on page 1848]:

The Government has received from the railroads concessions which have saved to service \$1,300,000; and these concessions were made by the railroads to the Government to aid in reclaiming these arid lands.

Mr. NEWELL. I beg your pardon; where is that?

Mr. VERTREES. Page 1848, at the bottom.

Mr. PEPPER. Down near the end, Mr. Newell, about ten lines from the end.

Mr. NEWELL. Yes, sir; I have it.

Mr. VERTREES. Did they not represent that to be a fact, those two gentlemen?

Mr. NEWELL. They said so; yes, sir.

Mr. VERTREES. Did they not also state in that report that Mr. Perkins had done nothing wrong with respect to the reception of that compensation or on the honorarium, if you will allow me to call it that?

Mr. NEWELL. I do not see that—on what line is that statement?

Mr. VERTREES. I did not have it marked and I will have to find it. Did not they report that the office was badly disorganized, and that needed reorganization, and that they thought Mr. Perkins was a man capable to run it if given entire charge?

Mr. NEWELL. That was an obvious inconsistency in their report, because Mr. Perkins had been in charge for years, and it was disorganized under his charge.

Mr. VERTREES. Inconsistent or not, did not they report in point of fact that the office really had no head and that there were three different departments in it when there ought to be but one?

Mr. NEWELL. I do not see that statement.

Senator ROOT. Is not the thing that you are looking for just about what you quote above about the Government, two or three sentences above "We do not feel that the Government has been injured, etc.?"

Mr. VERTREES. Yes. Senator Root calls attention to that, which appears on page 1848.

Mr. NEWELL (reading):

All the expenses necessary to the conduct of these lectures, such as renting halls when necessary, obtaining slides for the lantern, and hiring a man to operate the lantern were to be borne by Mr. Perkins out of the \$50 per lecture paid him by the railroads. We have endeavored to learn from the railroads (from outside parties as well as from the office force) whether or not any partiality has been shown for any particular projects, or that any railroad has been favored in these lectures. The railroad officials we have had conferences with speak very highly of the lectures and the lecturer, and say the lectures have been of great benefit in getting before the people

ple lands awaiting settlement, which the Government has no money to advertise or exploit. The lecture we attended was certainly impartial, and treated of projects both in the Northwest and the Southwest. No literature was distributed, nor was reference made to any railroad line in this lecture. We do not feel that the Government has been injured by these lectures, or that Mr. Perkins has acted in bad faith; nor can we find that it has in any way interfered with his official duties, or that any of the work was done during office hours. We believe that Mr. Perkins has given value received for the twelve hundred dollars (\$1,200), or \$300 per month for four months paid him by the railroads, and that it was paid by the railroads only in the interest of the scheme of advertising the lands, and not that it would bring any business to them through Mr. Perkins.

Mr. VERTREES. Was not that part of the report which they made to Mr. Ballinger?

Mr. NEWELL. That is their report; yes, sir.

Mr. VERTREES. Do they not also say, on page 1849:

The authority for Mr. Perkins to enter into contract with the railroads to give these lectures, for which he received compensation, he considered ample under the letter of the Director of the Reclamation Service of February 24, 1909, and he, Mr. Perkins, was under the impression that the director was aware of the fact that he was receiving compensation for the lectures, as he had verbally informed the director of that fact when he (the director) was in the Chicago office on September 28, 1909. (See copy of statement of Miss Kathryn L. Walker, junior clerk, herewith.)

Did they not report that to Secretary Ballinger?

Mr. NEWELL. That is their report; yes, sir.

Mr. VERTREES. Now I want to turn to the question of organization. On page 1845 do they not—about the middle of the page—say this:

We found the office to be in a very disorganized state and its methods, as now conducted, far from businesslike. While Mr. E. T. Perkins is nominally the officer in charge, the work is so divided that there is a "purchasing clerk," who signs all mail pertaining to purchases and carries on the work incidental thereto, with a clerical force entirely under his own supervision. The same condition obtains with regard to the work of the "transportation clerk." The head of the office does not seem to have any authority or be permitted to exercise any control whatever as to the real and important work for which, it seems, the office was established. He opens and distributes the mail, but does not even sign the letters sent; nor is he consulted by either of the officers above named in the transaction of the business of their respective branches. Upon inquiry as to the cause for this arrangement or condition of affairs, we were informed that the responsibility rests entirely with the Washington office.

Did they not report that?

Mr. NEWELL. That was their statement; yes, sir.

Mr. VERTREES. Now, didn't they say, on page 1846, after considering the situation, that—

Mr. Perkins impresses us as possessing good administrative ability, and as being fully able to carry out the intents and purpose of this office—

about three-quarters of the way from the bottom?

Mr. NEWELL. Yes, sir; that was their statement.

Mr. VERTREES. And was it not on that report and that statement of those two persons that the Secretary did reorganize the office: did put Mr. Perkins in charge, but at the same time directing him to make monthly reports to you, is not that true?

Mr. NEWELL. He had always been charged with the entire responsibility of the conduct of the office, it has been under his head; he has always made and submitted monthly reports.

Mr. VERTREES. Did he not make an order then changing the system saying that Mr. Perkins had sole and exclusive charge of the Chicago office, but will make monthly reports to the Director of the Reclamation Service?

Mr. NEWELL. He did not change the system. He did not change anything except reduce a few clerks—reduce the office force—Mr. Perkins is and always has been in charge of that office.

Mr. VERTREES. I call your attention now to a letter to you dated June 14, 1910, which begins on page 1843 of the record written by the Secretary, after setting out these reports, what they state, this appears in that letter to you on page 1844:

To carry out the essential recommendations of Messrs. Evans and Callahan it is directed:

(1) That immediate steps be taken to organize the office along the lines above suggested in order to eliminate all unnecessary employment and expense as well as to place the entire responsibility for the conduct of the office under one head.

(2) That until otherwise directed Mr. Perkins be placed in entire charge of the office and held responsible for the efficient conduct and management thereof.

And then certain other orders made which speak for themselves, one of which I do not care to call attention, excepting No. 4, on page 1845, namely, that monthly reports be submitted to you for appropriate action.

Did you not receive that letter, and did you not understand that to be as an order made by the Secretary after receiving the report from Messrs. Evans and Callahan?

Mr. NEWELL. That was his orders.

Mr. VERTREES. Now, with those statements and your answers to my questions I wish you to state to this committee what there is in that that you bring up here as in any way reflecting upon the Secretary's conduct in reference to the Perkins matter.

Mr. NEWELL. Mr. Chairman, I have not brought that up as in any way reflecting upon the Secretary. The only inference to be drawn is that this order of the Secretary is identical with the facts which have existed since Mr. Perkins went there.

He has always been charged with the entire responsibility of the conduct of the office, it has been under his head; he has always made and submitted monthly reports as to the condition of the work, the amount of business transacted, to be submitted to the director at the end of each month; he has always indicated the number of clerks that he needed, and has had his instructions to dispense with the services of them just as fast as in his opinion he could cut down that office force. So that these instructions added absolutely nothing to the existing situation.

Senator FLINT. Do you think the condition of affairs in Chicago had been bad?

Mr. NEWELL. I made up my mind in going through in the fall that they were; that Perkins had diverted his attention from attending to the office to attend to these evening lectures, and I was convinced that we must reorganize this office as soon as we could.

Senator FLINT. How long has that office, in your opinion, been in bad condition?

Mr. NEWELL. Ever since Perkins got into that black-tent affair.

Senator FLINT. When was that?

Mr. NEWELL. That was in May.

Senator FLINT. For how long a period, then, had the office been in bad condition?

Mr. NEWELL. I think it gradually deteriorated from May, as Perkins's attention was drawn more and more to other affairs.

Senator FLINT. From May to what time?

Mr. NEWELL. From May to—well, up to the present time. I not think it is in good condition yet.

Senator FLINT. Was it in good condition prior to May, I mean your opinion?

Mr. NEWELL. In the winter preceding Perkins had an attack of sickness and was away from the office a good deal. We then attempted to bring the work up to date and get it on a better basis. It was running very well early in the spring, but the work has been dropping behind owing to the great volume that goes through the office.

Mr. VERTREES. Doctor Lind was in Chicago investigating when Messrs. Evans and Callahan started to Chicago for that purpose, was he not, Mr. Newell?

Mr. NEWELL. He was; yes.

Mr. VERTREES. And was instructed to turn over to them, rather to expose or to exhibit to them, all the information and data that he had?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. But he left there as soon as he heard they were coming, did he not?

Mr. NEWELL. He did not know they were coming; he left in ignorance of their coming, and was greatly surprised.

Mr. VERTREES. Why did he leave?

Mr. NEWELL. He had finished his work.

Mr. VERTREES. And he telegraphed back for his report?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. And you sent it to them, and they had his work before them, while they were investigating?

Mr. NEWELL. I believe that is the case.

Mr. VERTREES. You said something about the disorganization of the engineering force of the Reclamation Service. Did you mean by that to say that the engineers were leaving because of their treatment by Mr. Ballinger?

Mr. NEWELL. The word I used was demoralization, not disorganization.

Mr. VERTREES. Was the demoralization due to his mistreatment of them or his treatment of them?

Mr. NEWELL. It was due to doubts of the future. I am frequently receiving letters from some of our best men asking what assurance can give them, if any, as to the future.

Mr. VERTREES. Now, is it not a fact that the trouble was not with Mr. Ballinger, but with the fact that your men, as they became experienced and capable, were attracted by the salaries offered by private persons and corporations?

Mr. NEWELL. That is a condition that always prevails in government work, that men, as they become experienced, have temptations to leave.

Mr. VERTREES. Did you not in a letter of October 8, 1909, to Mr. Hill, which appears on page 1819, with reference to this question, say

The salaries paid to men occupying the higher positions are, as a rule, less than those paid by corporations, and there is a strong temptation for such men to leave the public service when they become most valuable to it. These are conditions which must be met, whether they are good or bad.

Resignations are unfortunately taking place very rapidly and are usually those of who can least be spared.

That is a correct statement, is it not?

Mr. NEWELL. That is a condition that is prevailing; yes, sir.

Mr. VERTREES. Now, I will ask you furthermore if you did not write Mr. Perkins on December 4, 1909, the letter which appears on page 1837 of the records, in which letter appears this:

I see no future for you in the Reclamation Service. It already has a large number of experienced engineers, many of whom are being furloughed on account of reduction of work.

Is that not true?

Mr. NEWELL. That is a correct statement.

Mr. VERTREES. And was true then?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. Now, in answer to a question by the chairman before we adjourned for noon, Mr. Newell, you spoke of the engineers being furloughed as being inexperienced engineers.

Mr. NEWELL. No, sir; I said the less available men, if I recall my language. These are experienced men, but they are not the men that are easily lost because of their reputation acquired outside.

Mr. VERTREES. Did you not tell Mr. Perkins that a large number of inexperienced engineers had been laid off or furloughed?

Mr. NEWELL. Yes, sir; they have.

Mr. VERTREES. On account of the reduction in the work.

Mr. NEWELL. Yes, sir.

Mr. VERTREES. So that was their real situation then; there had been such reduction of work that the men were not wanted?

Mr. NEWELL. We have that condition now.

Mr. VERTREES. And those experienced men were being furloughed at that time, instead of the disorganization that you have been talking about?

Mr. NEWELL. No, sir; you are mixing two things there.

Mr. VERTREES. How many men have—

Mr. PEPPER. Will you allow him to finish his explanation?

Mr. NEWELL. That is all. He has a complicated situation.

Mr. VERTREES. I believe I would like you to state what two things you are mixing.

Mr. NEWELL. In the first place, the men who are leaving the service now are being furloughed, but the best men that we want to keep are those who are kept in the service because of their belief that there is a future in the service. We are holding men and have been trying to hold them at such salaries as they would receive outside because of their belief in the continuity of the work and in the character of government employment.

The CHAIRMAN. Do you believe, Mr. Newell, that it is contingent on your remaining in the service that these extremely available men remain. In other words, let me put it more fully. Do you think these good men get nervous and restless and want to go because there is an uncertainty about your being retained in the service?

Mr. NEWELL. Well, I would not put it as personal as that, but as to continuing the policy of the past. Of course, I have some personal friends, but there are others who are attached to the service as a service and the continuity of its methods.

Mr. VERTREES. Laying aside the natural modesty which you may have about making an answer to so personal a question, do you not feel that way about it, Mr. Newell, that considerable disorganization could follow your removal?

Mr. NEWELL. I have been told so by Mr. Davis.

Mr. VERTREES. Well, you believe Mr. Davis's statement, do you not?

Mr. NEWELL. I have great confidence in what Mr. Davis says.

Mr. VERTREES. So it comes back to that, that you believe so. Now, then, I understand that. You told Mr. Perkins that you saw no future for him in the Reclamation Service?

Mr. NEWELL. I did not.

Mr. VERTREES. And in that same connection you had stated to him that many experienced men were being furloughed. How many have you furloughed since March, since Mr. Ballinger came in?

Mr. NEWELL. Within the last year—I can not recall. Mr. Davis was looking it up the other day. I think he mentioned twenty or more.

Mr. VERTREES. How many have resigned within that time?

Mr. NEWELL. That is another figure that I do not recall. I think something like 34, or something within that range.

Mr. VERTREES. Are these not the exact figures, that 25 have been furloughed since March 4, 1909, and 24 have resigned?

Mr. NEWELL. I do not know. I have not checked them up.

Mr. VERTREES. Those figures are given to me as correct figures by months. I have them by months.

Mr. NEWELL. That is a matter of figures as to which I am unable to state. Of course, we have a great many men leaving and coming. You have the Secretary's appointees, probably, there.

Mr. VERTREES. It is the reclamation record—the record of the Reclamation Service. I do not know whose appointees they are. I want to ask you something about the Roosevelt dam now. Mr. Davis thought that the Secretary had interfered there in a way that he should not. Now, did you not direct work on that dam to be suspended in the summer of 1909?

Mr. NEWELL. The supervising engineer, Louis C. Hill, on June 4, 1909, notified the contractor to cease work after certain conditions.

Mr. VERTREES. But did he not do it pursuant to your direction?

Mr. NEWELL. No, sir; I do not recall that he did. He had the general authority, of course, to carry out the terms of that contract. Whether he called that to my attention specifically or not I do not recall.

Mr. VERTREES. I am furnished here with what purports to be a copy of your letter to Mr. Louis C. Hill, supervising engineer—I think the original has been sent here—dated Los Angeles, Cal., June 4, 1909, and addressed to Mr. Chester W. Smith, engineer United States Reclamation Service, Roosevelt, Ariz., as follows:

LCH MAK.]

LOS ANGELES, CAL., June 4, 1909.

Mr. CHESTER W. SMITH, Engineer,
U. S. Reclamation Service, Roosevelt, Ariz.

DEAR SIR: According to the terms of the contract with J. M. O'Rourke & Co., the United States reserves the right to cease work of laying masonry on the Roosevelt Dam during the months of June, July, August, and September, when the average height of the dam above datum is 150 feet. I have been instructed by the director that we will avail ourselves of this clause in the contract, and that as soon as the average height of the dam certainly reaches 150 feet no further masonry will be laid until September 1st, and possibly until October 1st.

Kindly notify the contractor, sending him also the inclosed copy of this letter.
Very truly, yours,

LOUIS C. HILL,
Supervising Engineer

Do you know anything of that letter?

Mr. NEWELL. I do. That letter I have seen here in the files.

Mr. VERTREES. That being true, I ask you whether or not the statement there by Mr. Hill that he had been instructed by you at the service would avail itself of this clause in the contract is true?

Mr. NEWELL. He had general instructions; I do not remember any specific order; but that was his instruction to the supervising engineer—to carry out the terms of that contract according to his discretion. Of course I may have had some correspondence, but I do not recall it.

Mr. VERTREES. Such letters as Mr. Davis wrote as chief engineer are written by authority unless countermanded?

Mr. NEWELL. Yes, sir; the same authority. There is no question to his being authorized to do it, whether it was by me personally or Davis, but he had the authority and that is a correct letter.

Mr. VERTREES. What I wish to get at is whether or not it was not a special direction of the Washington office to do it?

Mr. NEWELL. That I can not recall; I do not think it was. I think it was in accordance with the general authority, which he had exercised since the beginning of the work.

Mr. VERTREES. He assumed to take as important a step as that without authority from the Washington office?

Mr. NEWELL. He has full authority over that structure.

Mr. VERTREES. I know he has authority over that structure to see the way the work is carried on, but I am on the point of stopping the work for the season, for the summer.

Mr. NEWELL. Yes, sir; he would have to depend on his judgment, wholly, and that of the engineer on the ground.

Mr. VERTREES. As to the way to do it?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. But as to stopping it; could he do that without special instructions from the Washington office?

Mr. NEWELL. I think he would. That is the type of men I have to get.

Mr. VERTREES. Then, if that is true, what is the necessity for this man saying that he does it by instructions from you?

Mr. NEWELL. Simply because that is the general chain of authority. He has the authority to do it in his general authorization to conduct the work and carry it on.

Mr. VERTREES. Now, look at this paper which I show you, which purports to be a letter dated May 27, 1909, from Mr. A. P. Davis, acting director, and see if you recognize that letter as one of which you had knowledge at the time?

Mr. NEWELL. I do not recall that letter, but it seems to be a genuine letter.

Mr. VERTREES. You think it is genuine, do you not?

Mr. NEWELL. Yes, sir; I think that is the discussion—

Mr. VERTREES. I will ask you to read this letter, or rather, I desire, Mr. Chairman, to offer it in evidence.

The CHAIRMAN. Very well. It will be received without objection.

Mr. VERTREES. The letter is as follows:

[VGC-GMA]

MAY 27, 1906

SUPERVISING ENGINEER U. S. RECLAMATION SERVICE,
Phoenix, Ariz.

DEAR SIR: The data furnished this office for use in preparing the twenty-ninth quarterly estimate shows that the Salt River project expenditures will exceed the allotment by \$612,000 on October 1. As the reclamation fund is very low and all projects have reduced operations to the minimum, your estimate has been tentatively reduced in this office as follows:

Items.	Estimates submitted.	Reduced estimate
1. Salaries, engineers.....	\$14,000	\$10,000
2. Wages, foremen.....	92,000	4,000
3. Supplies, subsistence, etc.....	10,000	5,000
4. Materials.....	55,000	20,000
5. Equipment.....	5,000	2,000
6. Purchase of lands.....	65,000	5,000
7. Freight.....	40,000	20,000
8. O'Rourke.....	190,000	50,000
9. Wolf Sachs.....	4,500	2,000
10. Standard Oil.....	7,000	4,000
11. Shattuck & Nimmo.....	28,000	20,000
12. Lidgerwood Machine Co.....	4,500	4,000
13. Chalmers & Williams.....	9,000	6,000
14. General Electric Co.....	6,000	6,000
15. S. Morgan Smith.....	4,000	4,000
16. Miscellaneous.....	10,000	.....
	\$45,000	\$20,000

In order to accomplish the above reductions, it will be necessary for you, as soon as the average height of the dam is certainly up to 150 feet, to notify J. M. O'Rourke & Co., to close down all masonry work, this closure to last until September 1 or longer, if necessary. This will enable you to close down the cement mill, the sand plant and miscellaneous work, thus reducing your force account expenses very materially. It will probably be necessary to continue the operations of the cement plant for about one month in order to provide a supply of cement to enable O'Rourke to begin operations when funds are available.

Please advise if any obligations have been incurred which will require expenditure in excess of the reduced allotment as above set forth. The quarterly estimate is being held pending receipt of reply from you on this point. An effort will be made to secure a transfer of funds from some of the other projects to cover the amount of the deficit which will still exist in the Salt River allotment.

Very truly, yours,

A. P. DAVIS, Acting Director

P. S.—It is hoped that a warrant on the funds received in the current fiscal year can be obtained from the Secretary of the Treasury before the expiration of July. But until this is done expenditures in excess of available funds can not be authorized.

The CHAIRMAN. Mr. Newell, I understand you to say that you believe that to be a correct copy?

Mr. NEWELL. That appears to be correct.

Mr. VERTREES. What was the ground on which you ordered the director to suspend work?

Mr. NEWELL. The instructions are given in that letter of June the 4th, I think it was, on the ground of section 60 of the contract entered into with him.

Mr. VERTREES. That was the reason you did it, but what was the ground?

Mr. NEWELL. That was the authority.

Mr. VERTREES. I know that was the authority, but why did you exercise that authority?

Mr. NEWELL. We had two reasons, first, a structural one, on account of not wishing to build a dam in that high temperature when it arrived above 150 feet and would be subject to a temperature strain; secondly, we hoped to reduce our expenditures that year at the time the work would necessarily be suspended during the hot months of the season, as contemplated by section 60 of the contract. We had various other reasons, but those were the two leading ones.

Mr. VERTREES. Had not the contractor, Mr. O'Rourke, progressed very rapidly with the work?

Mr. NEWELL. He was then progressing rapidly; yes, sir.

Mr. VERTREES. I mean at that time.

Mr. NEWELL. Yes, sir.

Mr. VERTREES. Then was not the reason assigned to him for suspending the work that by reason of the hot weather the dam had reached a point where it would not be safe to the structure to proceed?

Mr. NEWELL. That was the only proper reason to him; the only legal reason we could do it.

Mr. VERTREES. And that was the legal reason you gave him?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. In point of fact, was not the real reason that you did not have the money; that the appropriation had run low, and it could be necessary to draw on the allotment of the appropriation for 1910, and you did not want to do it?

Mr. NEWELL. That was one of the two reasons, but not the controlling reason.

Mr. VERTREES. The reason you gave the contractor was one relating to the structure of the dam to the work.

Mr. NEWELL. That was reason No. 1—the structural condition.

Mr. VERTREES. That was the reason you gave him?

Mr. NEWELL. Yes, sir; that was the one we gave him.

Mr. VERTREES. But the point I wish to inquire as to, and you to answer with respect to, is whether or not the principal one with you, with the Washington office, was this a question of funds and finances?

Mr. NEWELL. No, sir; the principal reason was the safety of the structure, and second finances.

Mr. VERTREES. Now, Mr. Newell, is not this a fact: That when notice was given to the contractor, Mr. O'Rourke, he came at once to Washington, complaining that it was improper, and that you and Mr. O'Rourke and Mr. Finney and Mr. Carr met at the Secretary of the Interior's office and discussed the matter?

Mr. NEWELL. We met on the afternoon of June 23. We were to meet the Secretary at 3 o'clock.

Mr. VERTREES. To discuss the situation?

Mr. NEWELL. And listen to O'Rourke's appeal.

Mr. VERTREES. O'Rourke appealed from the order and said that you were wrong, and he thought the work could proceed?

Mr. NEWELL. That was his statement.

Mr. VERTREES. And at this time did he not repeat this statement to you in the presence of those gentlemen, and did you not then and there agree that the work could proceed?

Mr. NEWELL. I did not agree. We asked him to put his statement in writing, and at the same time wired to Hill the following telegram of June 23:

O'Rourke here. Appeals to the Secretary that dam not completed to 150 feet and that he should not be put to loss by stopping. If money made available, would you recommend continuing during summer?

NEWELL.

He replied to that on the same date——

Mr. VERTREES. We have not gotten to that. I want your mind on the question. I am, first, on the question that there was a conference there.

Mr. NEWELL. There was a conference; yes, sir.

Mr. VERTREES. To which you were called for the very purpose of discussing what should be done with reference to this matter?

Mr. NEWELL. For the purpose of listening to O'Rourke's statement.

Mr. VERTREES. This statement of Mr. Davis—if he made that statement—that the Secretary proceed without consulting with you all in the matter is not accurate?

Mr. NEWELL. He issued his orders without consulting us and without finding what the effect would be.

Mr. VERTREES. I am not on the question of the order. Were you not consulted, just as you have stated, before that order was issued?

Mr. NEWELL. I heard O'Rourke's appeal, but we did not consult with the Secretary because he was away, and we asked O'Rourke to file his appeal in writing, that we might consider it and refer it to the engineer in the field.

Mr. VERTREES. Were not the Secretary's representatives there considering the question, and did they not call you in to consult with them and consider it because it was an appeal brought up by Mr. O'Rourke?

Mr. NEWELL. But we referred the matter to the engineer on the ground as to that physical question.

Mr. VERTREES. We will get to that question of reference presently.

The CHAIRMAN. You did not answer the first part of his question.

Mr. VERTREES. It was whether there was not a conference there between the representative of the Secretary and himself as to this matter and what should be done.

Mr. NEWELL. We went there to hear O'Rourke's appeal.

Mr. VERTREES. Did you talk that over?

Mr. NEWELL. We listened to it.

Mr. VERTREES. As to what he said?

Mr. NEWELL. We asked him to put it in writing.

Mr. VERTREES. Did you express your views in the matter?

Mr. NEWELL. I tried not to express my views until we could consult with the engineer on the ground.

Mr. VERTREES. Did you intentionally refuse to purposely consider that matter on the ground with these gentlemen?

Mr. NEWELL. My intention was not to consider the matter until we could hear from the engineer on the ground.

Mr. VERTREES. Do you not know that the matter was there put to you, the Director of the Reclamation Service, that Mr. O'Rourke contended that the order was wrong and did him injustice, and that the

work could proceed by wetting the masonry, and you agreed that that was true?

Mr. NEWELL. I did not agree, but the subject was presented.

Mr. VERTREES. Did you assent to it?

Mr. NEWELL. I do not know that I assented to it.

Mr. VERTREES. Did you dissent from it?

Mr. NEWELL. I think I dissented from it and said I wanted to wire Mr. Hill.

Mr. VERTREES. In point of fact, did not the work proceed under Mr. Ballinger's direction in that way subsequently?

Mr. NEWELL. Not in that way. There was subsequently a change of plans.

Mr. VERTREES. Did you not then and there admit and state to those gentlemen that it could be done in that way without injury to the masonry or to the structure?

Mr. NEWELL. No, sir; I said if O'Rourke's statement was true, I did not admit anything excepting that assuming that O'Rourke's statements were correct.

Mr. VERTREES. Now, what about O'Rourke's statements?

Mr. NEWELL. You have given them substantially; that he thought that if he could work his entire eight derricks there, and that strain could not be produced, he could keep his stones wet, and he made that statement. I did not assent to it, but I insisted on consulting Hill, who was the responsible engineer on the ground.

Mr. VERTREES. Do you mean to say that you, as Director of the Reclamation Service, expressed no opinion on that engineering point then?

Mr. NEWELL. I wanted to be sure of my facts before I expressed an opinion.

Mr. VERTREES. Do you mean to say that you expressed no opinion then that in the construction of a dam by wetting the rocks or stones they could go ahead with the masonry?

Mr. NEWELL. I was somewhat dubious about the probability of it.

Mr. VERTREES. Did you so express yourself then?

Mr. NEWELL. I think I abstained from expressing myself. The matter was discussed.

Mr. VERTREES. On the contrary, did you not admit and concede then to all those gentlemen that it could be done without injury to the work?

Mr. NEWELL. That is not my recollection.

Mr. VERTREES. Do you deny it?

Mr. NEWELL. I say I do not recall that.

Mr. VERTREES. That is as far as you can go, that you do not recall it. At any rate you do admit that this much was true, that you were called in as director to consult and confer about that matter, and that was before the order was made?

Mr. NEWELL. I was called in and stated that I wanted to get more information, and to wire Hill for that information. The action was taken before I got the information.

Mr. VERTREES. Then, I will ask you if on June 24, 1909, you did not give this memorandum to Mr. Finney, who was representing the

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Secretary of the Interior at that conference to which I have just referred, namely:

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, June 24, 1909.

[Memorandum for Mr. Finney.]

In reply to my telegram of last night, Mr. Louis C. Hill, supervising engineer wires as follows:

"Dam will probably be completed to average height hundred fifty feet middle of July; unless shut down would affect contract do not recommend continuing during summer under existing conditions."

Very truly, yours,

F. H. NEWELL, Director.

Mr. NEWELL. That was the telegram from Hill, and I understand orders were issued before he could get that telegram into the hands of Mr. Finney.

Mr. VERTREES. Did you not give that to Mr. Finney on June 24, 1908?

Mr. NEWELL. Yes, sir; I sent it to his office.

Mr. VERTREES. And Mr. Finney is the representative of the Secretary of the Interior.

Mr. NEWELL. And on that date they were ordered to rescind the instructions.

Mr. VERTREES. Now, in point of fact, was not an order suspending the work rescinded that very same day, June 24, by the assistant secretary, Mr. Pierce?

Mr. NEWELL. Mr. Pierce signed the order to rescind Hill's order of June 4 on June 24, the date I sent down that telegram from Hill saying he did not recommend continuing during the same season.

Mr. VERTREES. Do you recognize that paper which I now show you as Mr. Pierce's order? And if you say you do, I ask you to hand it in, to the end that it may be made a part of the record.

Mr. NEWELL. Yes, sir; this appears to be the order of Pierce.

Mr. VERTREES. I ask that that be made part of the record.

The CHAIRMAN. That is admitted in the absence of objection.

(The paper referred to is as follows:)

[B. C. F.]

DEPARTMENT OF THE INTERIOR,
Washington, June 24, 1909

The DIRECTOR OF THE RECLAMATION SERVICE,
Washington, D. C.

Sir: Pursuant to instructions, the supervising engineer, Los Angeles, California, on June 4, 1909, directed the project engineer at Roosevelt, Arizona, that, under the terms of the contract with J. M. O'Rourke & Co., the latter would be required to discontinue the work of laying masonry upon the Roosevelt Dam as soon as the same reaches the average height of 150 feet, no further work thereon to be done until September 1st, or possibly October 1st.

The contractor has protested against this action, on the ground that the contract does not authorize the cessation of work when the dam has reached an "average" height of 150 feet, but only after "the completion of the dam to the 150-foot level" that the dam in question is in part only completed to the height of 107 feet, and which portion such an amount of water is running, owing to an accident to the diversion tunnel, as to preclude work thereon by the contractor. It is also urged that the engineers in the field are of the opinion that the heat will not affect the masonry work during the summer months if it is kept wet while being laid. It is urged that it would be unfair to compel the contractor to shut down the work for two or three months, as it would result not only in a financial loss but in a disorganization of the forces and a delay in reassembling same after work is permitted to be resumed. It is

the understanding of this department that the financial part of the matter does not form an insuperable barrier to a continuance of the work, as sufficient advances can be obtained from the reclamation fund in the Treasury for that purpose.

To say the least, it is exceedingly doubtful whether the clause in the contract authorizing the discontinuance of the work warrants such action when an average height of 150 feet is reached. It is extremely probable that the courts would construe the clause to mean that the entire dam must be constructed to that height before the clause can be invoked.

In view of this fact, and as no vital or substantially important reason for discontinuing the work has been advanced, I have to direct that the suspension of work be revoked and the contractor allowed to proceed with the construction.

Very respectfully,

FRANK PIERCE, *Acting Secretary.*

Mr. VERTREES. I ask you if this was not the Secretary's action in that matter when he found that the grounds that you were suspending the work on in your statement to the contractor was that it would be dangerous to proceed with the work at that season of the year, and that the real ground was that the trouble you were in with respect to funds, and your disinclination to draw upon the funds for 1910, that he then ordered that work to proceed and set your order of suspension aside?

Mr. NEWELL. He set the order of suspension aside, but I do not think he had the information——

Mr. VERTREES. Did you ever at any time indicate to that contractor that the real substantial reason, or a real substantial reason, for your order on him was the financial difficulty?

Mr. NEWELL. I explained to him that that was one of the reasons; yes, sir.

Mr. VERTREES. Did you explain that to Mr. O'Rourke?

Mr. NEWELL. I think so. He understood it.

Mr. VERTREES. When did you explain it to him?

Mr. NEWELL. I think he understood it at the time he came to my office and asked about it.

Mr. VERTREES. You say you think he understood it. Who made him understand it; did you?

Mr. NEWELL. My statement to him was clear.

Mr. VERTREES. Did you say to him that that was the reason?

Mr. NEWELL. I stated the only reason that we could order it was under article 60 of the contract, but that also we would be very glad if we did not have to spend the money that year.

Mr. VERTREES. That you would be very glad of that?

Mr. NEWELL. Yes, sir; we did subsequently spend the money.

Mr. VERTREES. So that is the form in which you stated it to him, the way you have just given it to the committee?

Mr. NEWELL. Substantially.

Mr. VERTREES. The letter of May 27, 1909, to which I called your attention, written by Mr. Davis, is now presented to you for the purpose of having it made, Mr. Chairman, a part of the record, and I ask the witness to make it a part of the record.

The CHAIRMAN. Is that one of the letters he has identified?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. That is admitted.

(The letter referred to appears in a previous part of to-day's record.)

Mr. VERTREES. Do you know what happened in the Secretary's office with respect to the Roosevelt dam after this conference that you speak of?

Mr. NEWELL. The next I knew about it is that I took that order of Mr. Pierce and went down to him and asked him why he ever signed such a drastic order as that; that it was a very dangerous thing for a man in his position to order an engineer in the field to put his work in that condition. It was like the Secretary of the Navy ordering the captain of a vessel to put his boat in dangerous waters, and if the order was issued it should be modified so as to allow the judgment of the engineer to prevail.

Mr. VERTREES. Is it not a fact that the Secretary submitted it to Assistant Attorney-General Lawler for a legal opinion as to the rights of the Government, and did advise that the Government could not proceed as you had done, without subjecting itself to a penalty of \$250 a day?

Mr. NEWELL. I do not think he did before that order was issued. He did not have time.

Mr. VERTREES. Did he afterwards?

Mr. NEWELL. I think he did afterwards.

Mr. VERTREES. Did he ask an opinion on that point?

Mr. NEWELL. He then rescinded that because he said he had not given sufficient weight to article 60 of the contract.

Mr. VERTREES. Did he not direct the work to proceed, and did they not proceed with the work?

Mr. NEWELL. They gave me two subsequent orders, rescinding that instruction of June 24. On July 20 we had two alternative orders recognizing the validity of article 60 of the contract.

Mr. VERTREES. I do not care to go into the details of that legal question, but as a result did they not enter into a sort of compromise by which the work could proceed?

Mr. NEWELL. Yes, sir; Mr. Hill arranged—

Mr. VERTREES. Pursuant to the direction of the Secretary's office?

Mr. NEWELL. Mr. Hill made an arrangement with the contractor by which the masonry could be confined to the thicker part of the dam.

Mr. VERTREES. What steps did Mr. Ballinger take looking to the reorganization of your office?

Mr. NEWELL. The only steps that I recall now is a memorandum, I think, early in December, 1909.

Mr. VERTREES. In point of fact, did not Mr. Ballinger contend with you that your office was sadly in need of organization, and submit to you a plan of reorganization with diagrams?

Mr. NEWELL. He submitted to me a diagram; yes, sir.

Mr. VERTREES. And a lengthy written opinion, or, rather, statement, of the proposed reorganization of the Reclamation Service, stating what he wanted done, why he wanted it done, and did he not submit it to you for your comments and consideration?

Mr. NEWELL. He submitted it to me for my comment. He did not say he wanted it done. It was a matter for discussion.

Mr. VERTREES. I mean by discussion did he not write you a letter to this effect on December 4, 1909:

DEPARTMENT OF THE INTERIOR,
SECRETARY'S OFFICE,
Washington, D. C., December 4, 1909.

MY DEAR MR. NEWELL: I hand you herewith a memorandum and diagram covering proposed changes in the method of handling the affairs of the Reclamation Service. I have given considerable study to this subject and am convinced that the scheme outlined will be productive of a more satisfactory and efficient administration of the service. Of course, you will see that the details have not been fully worked out, but these can be developed in the most advantageous manner through conference. You will please consult with Mr. Arthur Davis, and I will be ready to confer with both of you in the next two or three days regarding the installation of this plan and will advise you when I am able to take it up. I am anxious to make as rapid progress with it as possible and to secure thereby such working relations with all branches of the service as will promote mutual confidence and a high degree of efficiency.

Very truly, yours,

R. A. BALLINGER, *Secretary.*

MR. F. H. NEWELL,
Director, U. S. Reclamation Service,
Washington, D. C.

Did you not receive that letter?

MR. NEWELL. I did.

MR. VERTREES. I will ask you to give it in evidence as part of your deposition and I ask that it be printed.

The CHAIRMAN. That will be done.

MR. VERTREES. I also offer, Mr. Chairman, under date of December 4, a plan of the proposed organization as drafted by the Secretary and submitted to Mr. Newell.

The CHAIRMAN. Inclosed with that letter or accompanying the letter?

MR. VERTREES. Yes, sir; accompanying the letter.

The CHAIRMAN. Is there objection to that?

MR. PEPPER. Not at all.

The CHAIRMAN. That will be admitted.

MR. VERTREES. Now, along with that did he not submit to you a diagram also illustrative of the proposed organization?

MR. NEWELL. Yes, sir.

MR. VERTREES. I will ask you if that is not the diagram he submitted or its being submitted for the purpose of obtaining your views and opinions?

MR. NEWELL. Yes, sir; that appears to be it.

MR. VERTREES. Did he not submit also a diagram showing the organization as it then stood?

MR. NEWELL. I think not. I do not recall that.

MR. VERTREES. I show you what purports to be a diagram of that organization as it then stood, and ask you whether it accurately represents it?

MR. NEWELL. To a certain degree; yes, sir. I would not make a diagram like that, but I think it conveys the general ideas fairly well.

MR. VERTREES. I desire to offer that diagram in evidence, Mr. Chairman.

The CHAIRMAN. Is there objection. The chair hears none, and it is so ordered.

MR. PEPPER. I desire to suggest that they be indicated to the stenographer so that they will be understood.

MR. VERTREES. There is a legend or memorandum on them.

MR. PEPPER. To show which is which?

MR. VERTREES. Yes, sir.

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(The plans and diagrams are as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, December 4, 1909.

THE PRESENT ORGANIZATION OF THE RECLAMATION SERVICE.

While under the terms of the reclamation act the Secretary of the Interior is immediately and personally responsible for all operations under the act, the present organization vests, in a large measure, the administration and construction in the director. He is now authorized to execute all contracts not exceeding one thousand dollars and all contracts for the execution of building and engineering work under plans outlined in statements and estimates previously approved by the Secretary, without referring such contracts to the Secretary for consideration or approval.

2. He is authorized to examine and approve all accounts of fiscal officers and creditors submitted for direct settlement in the Treasury.

3. He is authorized to correspond directly with the accounting officers of the Treasury and with the heads of bureaus of the Interior and other departments respecting the execution of work outlined and approve statements and estimates and all other matters which do not involve questions of general policy.

4. He is authorized to perform any and all acts necessary to carry into effect operations authorized by statements and estimates previously approved by the Secretary.

He is, under existing practice, required to submit to the Secretary for approval proposed reclamation projects for construction and allotment of funds therefor.

2. To submit to the Secretary quarterly statements and estimates showing work done and work contemplated for ensuing quarter and estimated amount required therefor.

3. To submit to the Secretary all matters of general policy and all legal matters requiring the consideration of the Assistant Attorney-General.

Under this method, as will be perceived, a very large discretion is given to the Director of the Reclamation Bureau, with the result that heretofore that officer has been the real power and alone possessed of full and accurate knowledge as to the status of pending and contemplated work and the conditions and circumstances surrounding the same. As at present organized, no reclamation matter of any kind reaches the Secretary of the Interior except through the director. A rough outline of the present organization is shown on the accompanying diagram.

DEPARTMENT OF THE INTERIOR,
Washington, December 4, 1909.

PROPOSED ORGANIZATION OF THE RECLAMATION SERVICE.

As the Secretary of the Interior is made by law directly responsible for the administration of the reclamation act, it is proposed to change the method of administration by dividing the service into three branches:

1. *Law.*—In charge of a chief law officer, attached directly to the Secretary's office
2. *Construction.*—In charge of a consulting engineer, attached directly to the Secretary's office; and

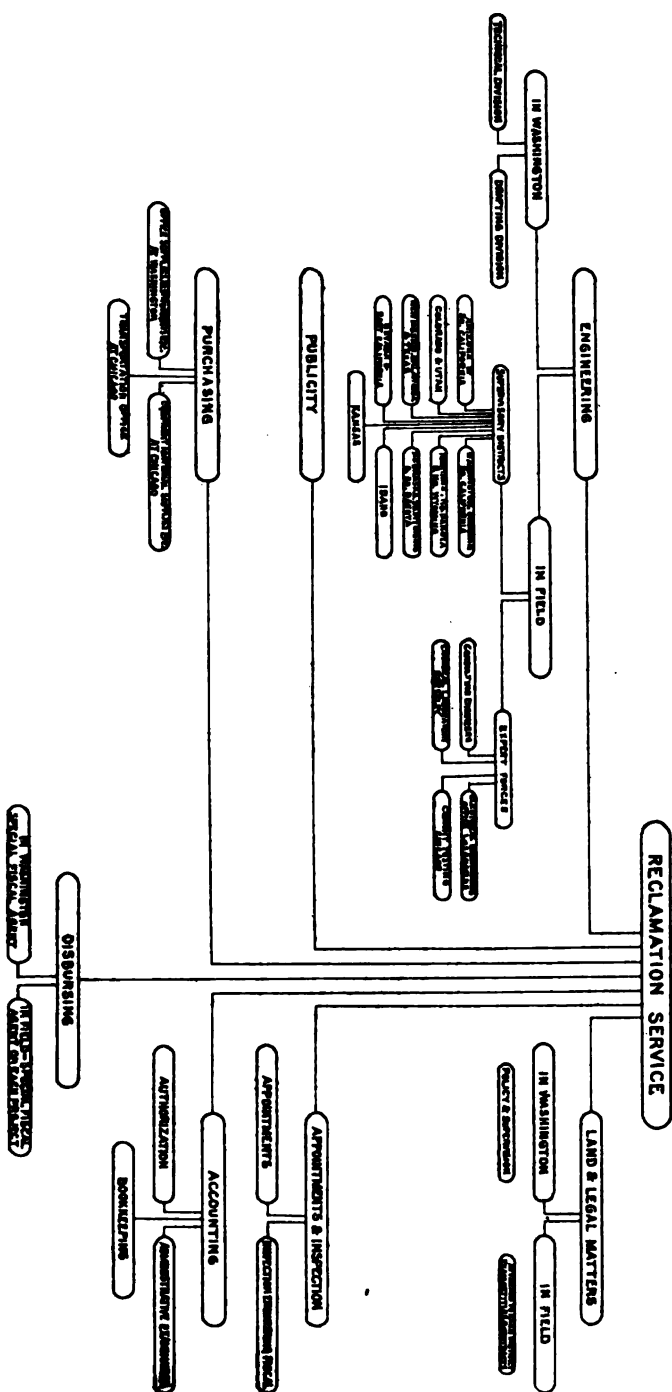
3. *The Reclamation Bureau.*—In charge of the director and dealing under the supervision of the Secretary with matters of examinations and surveys, settlement of lands, information, and experimental farming on projects, and accounting and finance.

The attached diagram shows roughly the proposed plan of reorganization and the principal officers thereunder.

Under the proposed plan the organization would be:

1. *Law.*—Chief law officer in the Secretary's office and assistants, and local or reclamation district attorneys, who would be either officers in the continuous employ of the Reclamation Service with headquarters at a central point within each district, or reputable local firms selected at a central point in said district and paid a per diem for the time actually employed in rendering legal services to the field force of the reclamation district. These attorneys would be responsible to the chief law officer.

Organization of Reclamation Service as existing December 4, 1909.



2. *The construction branch* would consist of the consulting engineer in the Secretary's office, accountable directly to the Secretary, a chief engineer, whose work would be largely confined to the field, and five or six supervising engineers in charge of the reclamation districts, to whom would be given direct supervision over the local engineers engaged in work on the various projects, and who would be held responsible for the work in their respective districts. Plans, contracts, and all matters relating to construction would come directly from the chief engineer or supervising engineers in the field to the Secretary and be immediately passed upon by the consulting engineer and chief law officer in the Secretary's office.

3. *The Director of the Reclamation Bureau* would be in charge of a bureau with three principal divisions:

Examination of surveys, which would deal with all preliminary examinations and reconnaissances of projects and proposed projects, with soil surveys and with the surveys subdividing the irrigated lands into farm units, which division would have a suitable office force and a field force.

The Division of Settlement of Lands with a suitable office force and such field assistants as might be necessary. Information, settlement of lands, and experimental farming on projects.

Division of Accounting and Finance, which would deal with accounting and fiscal matters both in the office and in the field, and would be composed of an office and a field force.

Mr. VERTREES. Mr. Newell, I here show you a leaflet which bears the legend, "Truckee-Carson Irrigation Project, Nevada. Opinion filed by the United States Reclamation Service September 15, 1909," and ask you to state what you know about that?

Mr. NEWELL. This was one of the series compiled by Mr. Perkins in accordance with his arrangement with the railroads in connection with this black-tent lecture.

Mr. VERTREES. Are the statements therein contained correct?

Mr. NEWELL. I have not read it, and I am not prepared to say.

Mr. VERTREES. Pass it back to me please. There is one I want to call attention to, the one entitled "Area of irrigable land," at the bottom of page 6. Will you read that and say whether that is correct or not? Is that correct?

Mr. NEWELL (after reading). I think that is fairly correct; yes, sir.

Mr. VERTREES. Is it correct that there are 50,000 acres there in the one project open to settlement?

Mr. NEWELL. I think there are even more open to settlement. The area is quite large. Not all of it has water, however.

Mr. VERTREES. You think there are even more?

Mr. NEWELL. There may be. I do not recall that matter accurately.

Mr. VERTREES. That was issued September 15, 1909, was it?

Mr. NEWELL. That is the date on the outside, yes, sir.

Mr. VERTREES. Then if there is that much, and probably more, the statement of Mr. Davis that there was none, or very little, is incorrect is it not?

Mr. NEWELL. I do not understand that question.

Mr. VERTREES. If he made any such statement as that?

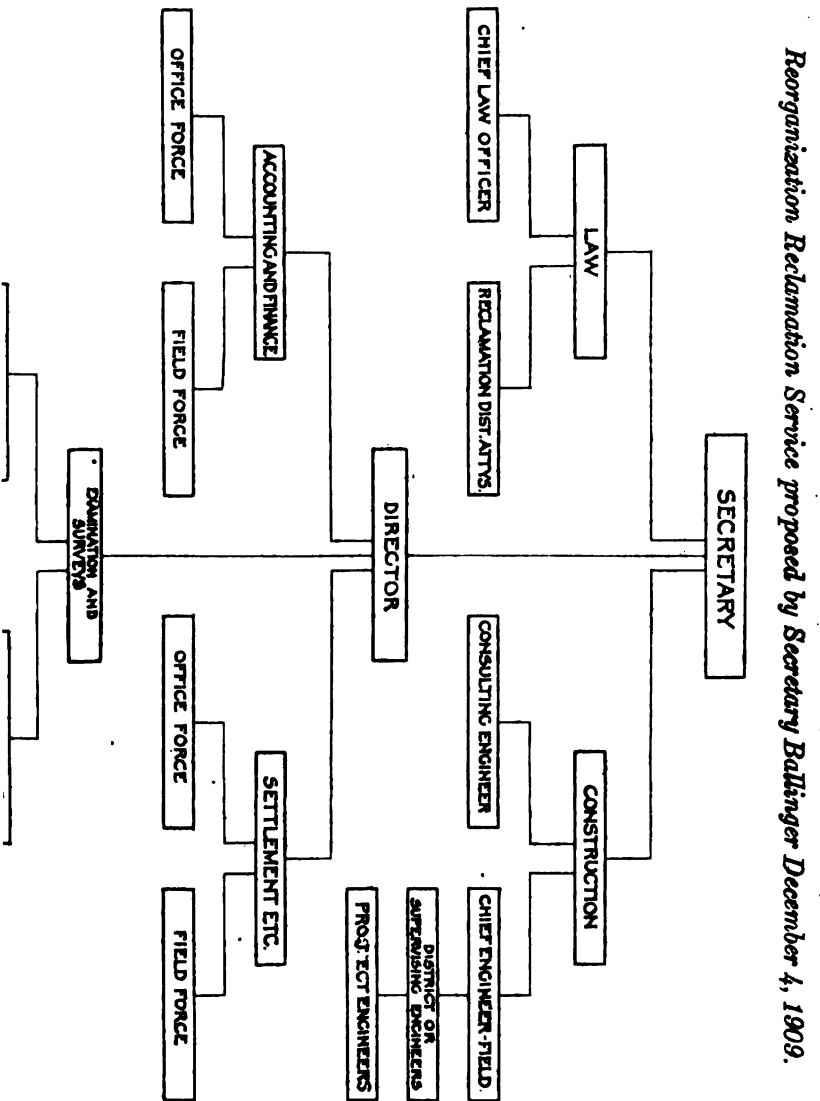
Mr. PEPPER. Have you some reference to give to him?

Mr. VERTREES. Yes, sir; page 1921 and 1788, and the further statement of Mr. Davis that there have been no inquiries, and you have been very careful not to encourage settlement within the last year, is also untrue, is it not?

Mr. NEWELL. I have not encouraged settlement there. The land is open.

Mr. VERTREES. What did you mean by sending such a thing as that t as late as September if it is not for the purpose of encouraging tlement?

Mr. NEWELL. I have stated that Mr. Perkins sent that out without



r knowledge. I did not know about it until after Mr. Perkins d prepared and issued it.

Mr. VERTREES. Mr. Perkins was representing that bureau, was he t. your service?

Mr. NEWELL. He was supposed to be, but he——

Mr. VERTREES. When did you first hear of that?

[illegible][illegible]

Mr. VERTREES. That contract, as I understand, was not drawn by Mr. Ballinger, was it?

Mr. NEWELL. I do not know; it was approved by him prior to my nature. I had his approval of it.

Mr. VERTREES. I am not on the approval now, but on the drafting it.

Mr. NEWELL. He had a large hand in the drafting of it and contacted very freely with the district attorney in California. He was there.

Mr. VERTREES. He was consulted and all that, but I asked you to draw it originally?

Mr. NEWELL. The engineering features were drafted by us and the legal features by the Attorney-General's office, with Mr. Ballinger's assistance.

Mr. VERTREES. You sent the original draft of the contract to the secretary of the Interior yourself, did you not, by letter dated April 1909?

Mr. NEWELL. What date is that?

Mr. VERTREES. April 22, 1909.

Mr. NEWELL. That is very materially modified from the form in which we finally find it. I should have to have both of them together in order to see, but I know there were a great many modifications.

Mr. VERTREES. Who signed it, you or Mr. Davis?

Mr. NEWELL. I signed it.

Mr. VERTREES. What I want you to speak to, if you can, is as to the fact of who drew it.

Mr. NEWELL. It is a composite draft; the engineering features were drawn by the Reclamation Service, and the legal features by the legal advisers of the department.

Mr. VERTREES. Well, the Reclamation Service urged that contract as a proper contract, did it not?

Mr. NEWELL. They have urged a number of them. We have a number of them.

Mr. VERTREES. I mean the one you finally signed.

Mr. NEWELL. Yes, sir; that is probably as good as we could get.

Mr. VERTREES. What is the cause of this delay?

Mr. NEWELL. I understand that the President has it under advisement.

Mr. VERTREES. Who objected to it?

Mr. NEWELL. I do not know about the objection.

Mr. VERTREES. Do you not know that the objection came from Mr. Pinchot?

Mr. NEWELL. I do not know that he objected to the first form.

Mr. VERTREES. Were you not informed that the objections came from him?

Mr. NEWELL. No, sir.

Mr. VERTREES. Have you any information as to the reasons why it is delayed?

Mr. NEWELL. There was a brief filed of objections which I think answered, in part at least, by a memorandum, prepared when I was in Billings, Mont.

Mr. VERTREES. Who filed that brief that you answered?

Mr. NEWELL. It was an unsigned brief handed to me by Mr. Ballinger personally.

Mr. VERTREES. Where did you understand it came from?

Mr. NEWELL. He did not say. He simply asked Mr. Davis and myself to prepare a reply to this statement.

Mr. VERTREES. You were requested to prepare that reply by Mr. Ballinger himself, were you not?

Mr. NEWELL. Personally; yes, sir. We prepared it afterwards.

Mr. VERTREES. I will ask you if it is not a fact that on June 9, 1909, Mr. Pinchot, in writing, presented a number of objections to that contract over his own signature?

Mr. NEWELL. I have seen a number of objections to the contract but I think that all those objections that were made were eliminated in the final draft, but I am not positive as to that.

Mr. VERTREES. You are not clear as to that. You were asked by some members of the committee, before noon, Mr. Newell, as to these reclamation projects, and as to what measures would be desirable or advisable or wise with respect to them, particularly with respect to the issuance of bonds—the proposed issuance of bonds by the Government to finish and complete them.

Mr. PEPPER. I think I asked him that question, and he rather expressed a preference not to give an opinion.

Mr. VERTREES. I know he did, but I am expressing a preference to have him answer it.

Mr. PEPPER. I did not mean to object, but you were suggesting that some member of the committee asked it. I wanted to suggest that I asked it myself.

Mr. VERTREES. Is this not a fact, Mr. Newell, that there have already been something like \$50,000,000 invested in twenty-seven projects that the Government has in hand?

Mr. NEWELL. There will be upward of \$60,000,000 at the end of this calendar year; yes, sir. I can give you the exact figures if you desire them.

Mr. VERTREES. I am on now not what happened at the end of the year. My question was if there was not something like \$50,000,000 already invested.

Mr. NEWELL. Yes, sir; \$51,414,000.

Mr. VERTREES. What do you estimate would be the amount required to finish and complete those 27 projects?

Mr. NEWELL. That is a very indeterminate figure, because we have not got to define what we mean by completion. That was fully discussed in the hearings before the Ways and Means Committee.

Mr. VERTREES. Not meaning to be exact, do you not estimate at the present that it will probably require something like \$70,000,000 to complete them?

Mr. NEWELL. If the plans which have been contemplated are carried out, it will require a very large sum of money.

Mr. VERTREES. Well, a million dollars is a very large sum.

Mr. NEWELL. Yes, sir; it will require a good many millions.

Mr. VERTREES. I am talking about \$70,000,000.

Mr. NEWELL. Yes, sir; we can make it \$70,000,000.

Mr. VERTREES. That is what I want you to say. Now according to the plans and rules that are now being worked on, it would require considerable time, would it not, to finish those projects?

Mr. NEWELL. Yes, sir; some of those are very nearly completed and others will require an unlimited time to finish them.

Mr. VERTREES. Now what do you think, as a man who has studied this question, you being the Director of the Reclamation Service, as to the issue of these \$30,000,000 bonds for the purpose of completing these projects?

The CHAIRMAN. Thirty million dollars?

Mr. VERTREES. Thirty million dollars in completing these projects rapidly and at the earliest possible moment. Do you think it is advisable or not advisable?

Mr. NEWELL. I should think it advisable to get more money to carry on the work. Of course when you use the term completion, I would—

Mr. VERTREES. Of course it is always desirable to get more money to perfect any work. That is not my question. I want to know from you, as a man who has studied this question as to this bond issue, whether or not you think it is a wise and proper thing to do or not, and if you say you do, state why; and if you say you do not, state why.

Mr. NEWELL. With proper restrictions I think it will be wise to be able to advance money to finish some portions of these projects, but as to the legislation which is proposed, I do not care to give an opinion.

The CHAIRMAN. May I ask you a question, Mr. Newell? In your opinion, assuming that you have plenty of money, how much could you profitably expend in a single year on these projects—I mean to advantage, supposing you had the money?

Mr. NEWELL. I think we could spend to good advantage from \$10,000,000 to \$15,000,000.

The CHAIRMAN. From \$10,000,000 to \$15,000,000 a year on these projects?

Mr. NEWELL. Yes, sir. It depends a good deal, however, on collateral legislation, which we need very much.

The CHAIRMAN. What do you mean by collateral legislation?

Mr. NEWELL. We should have legislation allowing us to carry on the work in a little more businesslike manner, such as you would carry on as an individual, and particularly along the line permitting the people on the projects to help themselves in the building of the smaller ditches. The expenses of the smaller ditches and structures are running up very rapidly, and I believe that the original idea of the law as discussed on the floor of the House should prevail, namely, that the Government should build a large structure and let the people finish the smaller works themselves.

The CHAIRMAN. I think that is a very good idea, but that is not the idea that has been carried out.

Mr. NEWELL. I think it ought to prevail in time. It is a simple business proposition that I think will come through.

The CHAIRMAN. If that plan was adopted—that is, what I call the small canals—were left for local work, and the Government would limit it to the main distributing canals, the work would be more rapidly done.

Mr. NEWELL. It would be more rapidly and more satisfactorily done. The point to me is not the money side so much as it is to get the people vitally interested in the work by doing part of it themselves. I want to get away from the paternalistic attitude of the Government doing everything for these people. Now, if I may

illustrate that point, in a case in which Senator Sutherland is interested, we are building a big tunnel. We ought to have a distributing system built now, and the farmers out there would build those, but if we go on with this system we will have a big tunnel built and then have to wait to get money to build a distributing system, and I think those people, accustomed as they are to ditch building, could build a distributing system within the high-line canal to better advantage now than we could do it.

The CHAIRMAN. And it would probably cost less.

Mr. NEWELL. It would cost them less because we are limited to the eight-hour law and the farmers can work as many hours as they please.

Senator SUTHERLAND. That is the Strawberry Valley project?

Mr. NEWELL. Yes, sir.

Senator FLETCHER. Do you mean based on the issue of certificates?

Mr. NEWELL. That is not an essential. The certificate is a mere outgrowth, but on any bookkeeping arrangement by which they could build that work themselves we would not assume the ownership of it. They simply build it and we certify—

The CHAIRMAN. And that part would be eliminated from a charge against the land?

Mr. NEWELL. That would be eliminated from the land. It would be a reduction in the cost to them in that amount. That I regard as even more important than the mere question of more money, because we do have enough money. It is to carry on these large works with a reasonable degree of satisfaction.

The CHAIRMAN. If you could eliminate that from the present law and present practice and confine the Government to these main canals, you would have money enough without borrowing?

Mr. NEWELL. We would have enough to go on with at the present time. The situation is this: We are in a rather critical condition. We have invested these large sums and have new enterprises and new untried conditions, and, in my opinion, we should be very conservative about continuing to build until we get the methods developed in good shape by getting the money back from the works that are already built. Nearly all of them are returning revenue, and we must organize in good shape to be sure to get the operation in the very best form.

The CHAIRMAN. How many projects have you now completed?

Mr. NEWELL. We have over twenty, I think, which are turning back a revenue. Very few of them are actually completed because there are always additions to be made. Probably the word completion is about as applicable to an irrigation system as to a city. Whenever the city will be completed our irrigation system will be completed.

Senator SUTHERLAND. How much money will it require to complete these 27 irrigation projects, not taking into consideration the extension, only tentatively considered—tentatively improved?

Mr. NEWELL. We made some estimates based on certain assumptions, and gave them to the Committee on Ways and Means, showing that on approved portions it would require about \$30,000,000 for extensions on some feasible operations of \$55,000,000.

Senator SUTHERLAND. Additional?

Mr. NEWELL. Yes, sir.

Senator ROOT. Eighty-five million dollars in all?

Mr. NEWELL. About \$85,000,000.

Senator SUTHERLAND. But the \$55,000,000 applies to extensions that you have not determined upon? You are only considering that in a tentative way?

Mr. NEWELL. Some of them are practically determined upon, but the details have not been approved, and others will range all the way through, because we are dubious about those that we know we must build.

Senator SUTHERLAND. If you had ample money, within what time could you spend this \$30,000,000?

Mr. NEWELL. My belief is that the most economical expenditure would be, say, about a million dollars a month. That is about an economical rate for handling it—something like that to complete the approved works.

Senator SUTHERLAND. That would be \$12,000,000 a year. How much are you receiving now?

Mr. NEWELL. We will expend this year a little over \$7,000,000, and estimate that in 1911 we will have seven million.

Senator SUTHERLAND. That is, from your own resources?

Mr. NEWELL. From our regular income; yes, sir.

Senator SUTHERLAND. So you can expend five million more to advantage?

Mr. NEWELL. Yes, sir; we could practically double that—from five to seven million more.

Senator SUTHERLAND. Would it not be really in the interest of economy in the end to be able to expend at least \$12,000,000 a year; in other words, could you not spend \$12,000,000 a year at a less proportionate expense than you could expend five, or six, or seven million?

Mr. NEWELL. I think we could if it were coupled with a little more leeway in this matter of assisting the people to help themselves. We are getting into a condition where we are spending too much money doing things that the people could, and should, and desire to do, so that if we can get legislation to help that condition I would say that your statement is correct.

Senator SUTHERLAND. That requires legislation amending an existing law, does it not?

Mr. NEWELL. To a certain extent; yes, sir.

The CHAIRMAN. In the use of the word extension, Mr. Newell, do you apply that term extension to what are called these lateral ditches?

Mr. NEWELL. No, sir; the large system—the main projects.

The CHAIRMAN. You may proceed, Mr. Vertrees.

Mr. VERTREES. Mr. Newell, in the letter written by you to Mr. La Follette dated July 10, 1909, and which appears on page 1900 of the record, I find among others this statement as to the withdrawals:

Recommendations for withdrawals, as a rule, were made by townships, or large areas because of the fact that the maps in many cases were found to be inaccurate.

Mr. NEWELL. We use the Land Office maps and the Geological Survey maps, so far as available, and our own maps.

Mr. VERTREES. In point of fact, would not the Geological Survey maps give you more information than the maps you used in making those withdrawals?

Mr. NEWELL. The Geological Survey maps are very limited in area. They cover very few of the withdrawals.

Mr. VERTREES. Is it not a fact that you yourself regarded that nine-tenths of this land thus withdrawn would have to be restored, or probably would be restored?

Mr. NEWELL. No, sir; I made the statement of nine-tenths on the basis that if you wanted to cut it down you could cut it down even as far as nine-tenths and yet preserve the principle of segregation of the power sites, but I never contemplated that we ever would actually cut them down.

Mr. VERTREES. Did you not in this same letter, in speaking of the conversation you had had with Secretary Ballinger say this:

I pointed out that nine-tenths of the area covered by these segregations could be eliminated in a short time and that a gradual restoration would attract less attention and would not seem to reflect upon the previous administration.

Mr. NEWELL. That covered his objections, as I understood them, but there was some latitude in my statement—well, if you want to cut them down, you can cut them down to even nine-tenths, but I did not believe they ever would do that.

Mr. VERTREES. I am now on the question of the extent to which, in your opinion, they could be cut down without injuring the protection of the power sites.

Mr. NEWELL. In my opinion they could probably be cut down to half or even three-fourths, and the best power sites could be held even if you cut away down to nine-tenths, but that was a mere figure of speech.

Mr. VERTREES. You just meant this as a figure of speech when you wrote it?

Mr. NEWELL. Yes, sir; to a very large extent. I habitually used that.

Mr. VERTREES. We understand that now. Then, it seems that the suggestion that a gradual restoration would attract less attention and would not seem to reflect upon the previous administration came from you?

Mr. NEWELL. I think not. I think that was an idea I obtained from Mr. Ballinger that he wanted them to proceed rather quietly.

Mr. VERTREES. It is another figure of speech when you say there that you pointed that out.

Mr. NEWELL. I pointed that out with reference to his objection. He was making certain objections. I said "well, if you want it that way, it can be done that way."

Mr. VERTREES. Is not this your language:

I pointed out that nine-tenths of the area covered by these segregations could be eliminated in a short time, and that a gradual restoration would attract less attention and would not seem to reflect upon the previous administration.

Mr. NEWELL. I said that to him in accordance with the conversation there.

Mr. VERTREES. What did you mean by that?

Mr. NEWELL. I meant that he was talking about the desirability of restoring these things quietly, and I said to him substantially—

Mr. VERTREES. But, what I am talking about, and what I want you to answer with respect to, is this: Were you not telling Senator La Follette here in this letter that you pointed that out to Mr. Ballinger, not that he pointed it out to you?

Mr. NEWELL. You must remember the conversation that preceded that. He had made certain objections and I pointed that out. "You can meet those objections by following this course."

Mr. VERTREES. I am not on his objection.

Mr. NEWELL. The point I want to make is that the idea originated with Mr. Ballinger and that I pointed out to him that those objections could be met by following that course, if he wished to follow that course.

Mr. VERTREES. The idea of the restorations was Mr. Ballinger's, not yours?

Mr. NEWELL. But the idea of doing it quietly, I think, was his.

Mr. VERTREES. That may be, but I am on this point. If you were not here telling Senator La Follette that it was your idea, and that you would point it out?

Mr. NEWELL. No, sir; I did not tell him that it was my idea. There is a distinction there between my idea and what I pointed out.

Mr. VERTREES. Just state that distinction.

Mr. NEWELL. That idea was before us in conversation. Certain conditions seemed to be uppermost in his mind. I pointed out that he might meet those conditions by taking such and such a course.

Mr. VERTREES. But the course you pointed out was the gradual withdrawal.

Mr. NEWELL. No, sir; that was his idea—that we should do it quietly.

Mr. VERTREES. That was his idea, and not yours?

Mr. NEWELL. Yes, sir; I think it was.

Mr. VERTREES. But you did not mean that when you stated it?

Mr. NEWELL. I meant exactly what I stated.

Mr. VERTREES. What about the Klamath project?

Senator SUTHERLAND. Let me ask you a question before you pass from that matter. I do not know that I quite understand it. Do I understand that Mr. Ballinger was desirous of restoring those lands and that he was also anxious to avoid any reflection upon the preceding administration?

Mr. NEWELL. I could not gain a very definite idea as to just what he did want. He talked of a number of things, and I was intent on that idea:

Now, Mr. Ballinger, we must not reflect on that administration; we must not restore those important sites, and if it appears too big you can cut it down, even cut down a very large proportion, and not throw away the most important sites.

Senator SUTHERLAND. Then it was your idea not to reflect on the preceding administration?

Mr. NEWELL. That was the idea that I suggested to him.

Senator SUTHERLAND. Then it was your idea to do it in such a way as not to reflect on the preceding administration?

Mr. NEWELL. We did not want to reflect on that administration. I advised him against anything that seemed to reflect on the preceding administration.

Senator SUTHERLAND. Did Mr. Ballinger assent to that apparently?

Mr. NEWELL. I do not know. In my conversation with him about it he simply put forward his ideas of what he proposed to do, and I interposed certain objections.

Senator SUTHERLAND. You talked it over. You must have had some impression about his attitude.

Mr. NEWELL. His attitude was that he said, "I am going to do it." And I said I hope you will not.

Senator SUTHERLAND. I understand that he wanted to restore the land, but as to reflecting upon the preceding administration, did he apparently acquiesce in your idea that that should be avoided?

Mr. NEWELL. I do not know as to whether that was so or not. I was not clear as to what his idea was.

Senator SUTHERLAND. What was the purpose of restoring them gradually? Was that in order to avoid reflection upon the preceding administration?

Mr. NEWELL. To avoid public comment on the fact that they were being restored.

Senator SUTHERLAND. And thus reflect on the preceding administration?

Mr. NEWELL. It would seem to follow; yes, sir.

Senator SUTHERLAND. And that finally was determined upon?

Mr. NEWELL. I do not know; I left Washington about that time and Mr. Davis took the matter up.

Senator SUTHERLAND. At any rate, whether it originated with you or originated with him, that seemed to be the idea that the preceding administration had withdrawn this land, and any reflection upon the preceding administration with reference to it was to be avoided?

Mr. NEWELL. That was my conception all the time.

Senator SUTHERLAND. By a gradual restoration that would be made, is that correct?

Mr. NEWELL. I suppose so; yes, sir.

Mr. VERTREES. I do not know now, after your statement, whether that idea originated with you or with the Secretary.

Mr. NEWELL. Which idea is that, Mr. Vertrees?

Mr. VERTREES. Of the gradual restoration, to prevent any reflection upon the previous administration.

Mr. NEWELL. There are two separate ideas there. The gradual restoration was his. I think I initiated the idea, at least it came into my mind, and I proposed to him that whatever we did, it should not reflect upon the previous administration. Those two ideas were brought forward at that time. I know that it was very strong in my own mind as to one of them.

Mr. VERTREES. On page 1787 of the record appears this statement in the testimony of Mr. Davis, speaking of the action of the Secretary:

In one case he instructed the supervising engineer to accompany him on a trip to Lake Tahoe and to Hetch Hetchy Valley on official business, and without notifying the director, but he did, just before he left, tell me what he had done, so that I knew it.

Now, that was one of the matters you mentioned to-day. Does it not appear there that Mr. Davis was informed that he had done this thing?

Mr. NEWELL. Yes, sir.

Mr. VERTREES. Did not Mr. Davis tell you that he had been informed by the Secretary?

Mr. NEWELL. He did not.

Mr. VERTREES. Did you not see that in the statement of Mr. Davis before you gave your statement here to-day?

Mr. NEWELL. I did not; no, sir.

Mr. VERTREES. You did not?

Mr. NEWELL. No, sir.

Mr. VERTREES. Well, I had asked you just a while ago about the Klamath project—there was some trouble or some difficulty about it, was there not, Mr. Newell?

Mr. NEWELL. I do not know of any particular difficulty. It is a very large project.

Mr. VERTREES. There was a part of it that had to be abandoned; here were really two parts?

Mr. NEWELL. We have not abandoned any of it. We have simply put down, at the request of the water users, the portion known as the lower project, eliminating the pump land, and confining the present work to the gravity system, so that that may be extended by us in the future, which is in accordance with the requests of the people up there.

Mr. VERTREES. What about the other part that you say you suspended or eliminated? What is to become of that?

Mr. NEWELL. We can take that up whenever we have funds, or the demand to take it up comes.

Mr. VERTREES. It is indefinitely postponed, is it not?

Mr. NEWELL. Yes; like all extensions of that kind, they can be taken up at any time. There is nobody particularly interested in it now.

Mr. VERTREES. Now, was not great dissatisfaction occasioned there by statements made by you to the effect that \$18.60 per acre would be the charge a person would have to pay?

Mr. NEWELL. I never made that statement. People claim that I have, but I have not. My statement was—

Mr. VERTREES. The dissatisfaction of course was due to the fact that it was increased above that, but based upon the statement that \$18.60 would be the charge?

Mr. NEWELL. No; the original unauthorized estimate of the engineers on an alternate project which was not built was that the project if built on those lines, and if it reclaimed certain lands, might cost \$18.62; but the project was not built on those lines, and the work as now constructed is radically different from that which was discussed at the time the statement was made. Since then the plans have been thoroughly revised.

Mr. VERTREES. Did you not make a speech to those people, or many of them, on the 26th day of November, 1904, in the Houston Opera House, at Klamath Falls, Oreg., in which, among other things, you said as to the Klamath project, and said it in response to direct questions put to you while you were speaking, that water under the project—under the Klamath project—would cost \$18.62 per acre, and in no event would cost more than \$20 per acre?

Mr. NEWELL. The newspaper report giving the account of my speech the next day said that I said most projects had cost \$26, and that I did not know what this project would cost, and that it could not be determined until it was built.

Mr. VERTREES. I did not ask you what the newspapers said next day.

Mr. NEWELL. I have already stated that I did not say \$18.62; I did not give any figures.

Mr. VERTREES. Were not a number of affidavits filed here with the department to the effect that you did say it, and the only excuse that you then gave, not that you had not used those figures, but that you

had also added the statement that the fixing of the amount was finally a matter for the Secretary?

Mr. NEWELL. I do not know what you are quoting, but I did not give those figures. I know those affidavits were made, but I have no confidence whatever in those affidavits.

Mr. VERTREES. Oh, yes; they are not so.

Mr. NEWELL. They are not so; I am absolutely sure of that.

Mr. PEPPER. Mr. Newell, you were questioned by Mr. Vertrees respecting this Roosevelt dam matter. I wish you would tell us frankly and in your own way whether the engineering reason for the suspension of that work under section 60 of the construction contract was of itself a good faith and sufficient reason for the order given?

Mr. NEWELL. It was.

Mr. PEPPER. That is to say, the existence of a contemporaneous financial reason was or was not necessary to move the making of this special order?

Mr. NEWELL. It was not necessary.

Mr. PEPPER. Now, you have been questioned about the reorganization of the Reclamation Service; you have been shown an elaborate memorandum and diagram submitted under date of December 4, with the accompanying statement that the thing was to be taken up within two or three days. What has been done in that matter?

Mr. NEWELL. That memorandum came to me on Saturday night, and on Monday noon Mr. Davis and I went over it with Secretary Ballinger very fully; we showed him, I think, conclusively that this reorganization was not feasible in any respect. We never heard anything more of it.

Mr. PEPPER. What would have been the director's authority under that scheme?

Mr. NEWELL. Why, the director would have had very little authority; he would have been practically almost a figurehead.

Mr. PEPPER. Now, you have been asked more or less personal questions respecting the attitude of the Secretary toward you. Leaving aside the question of what you may have inferred from information or rumors or statements from other people, has the Secretary ever come out, man to man, and told you anything respecting his desire to get you out of office or anything of that sort?

Mr. NEWELL. No; he has never come out in a direct statement as to his intents or desires.

Mr. PEPPER. And have conferences between you taken place in the course of which any such intention on his part could have been disclosed?

Mr. NEWELL. I think he has never led up to it in anyway.

Mr. PEPPER. So, that the uncertainty that you speak of is an uncertainty that is due to the fact that he has not made himself plain to you—is that the fact?

Mr. NEWELL. That is substantially correct; yes, sir.

Mr. PEPPER. Now, this Evans and Callahan report upon which you were questioned practically makes a number of countercharges against the Washington office of the Reclamation Service. It, as I understand the extracts read by Mr. Vertrees, places the responsibility on the Washington office for an ineffective division of authority in Chicago. Whatever may be the facts on that subject, was that report submitted to you at the Washington office before it was accepted as verity by the Secretary of the Interior?

Mr. NEWELL. No, sir; it was not submitted to us.

Mr. PEPPER. In point of fact, had not you, on the 27th of March, 1909, written to Mr. Perkins a letter which was sent up by the department, of which I show you a copy?

Mr. NEWELL. Yes, sir; this is the letter I wrote.

The CHAIRMAN. Is it a short letter?

Mr. PEPPER. Yes, sir; it is a very short letter.

The CHAIRMAN. You may read it.

Mr. PEPPER. I will read it. I was going to offer it without reading [reading]:

MARCH 27, 1909.

r. E. T. PERKINS, *Washington, D. C.*

DEAR SIR: Referring to my letter of March 6 regarding Mr. Kirksey, and our conversation, I think I should explain what I had in mind by the phrase, "It is advised at you allow Mr. Kirksey a free hand in the conduct of the purchasing section of our office." He is, of course, under your general direction as head of the Chicago office, and it is expected that you will personally see to it that his work is properly related to that of the other persons in the office. He should be permitted to exercise his judgment within the necessary limitations imposed by a good organization. Just what these are must be determined by the exercise of good judgment. For example, the relations between the supervising engineers and the project engineers are such that as a rule a very free hand is given to the project men to use their discretion, keeping, however, well within the limitations set by experience.

Now that you are able to be regularly at the Chicago office it is of course expected that you will take immediate and personal oversight of all of the details in the office, using discretion in adjusting the duties of the different men to obtain the best results, and that you will permit Mr. Kirksey and Mr. Dick each to work out the details along the line of their experience after consulting freely with you.

Very truly, yours.

F. H. NEWELL, *Director.*

The CHAIRMAN. What is the date of that, please?

Mr. PEPPER. March 27, 1909.

Did you receive any information from Mr. Perkins subsequent to that date, that the scheme of instructions therein given was not satisfactory?

Mr. NEWELL. No; I have always understood that it was the understanding.

Mr. PEPPER. Have you at any subsequent date modified the instructions therein given?

Mr. NEWELL. Not at all.

Mr. PEPPER. And am I right in understanding that if the Evans and Callahan report makes statements to the contrary, or implications to the contrary, that at least you were not given an opportunity to state your side of it when that came in?

Mr. NEWELL. That is true.

Mr. PEPPER. The only other question I want to ask is this, and that is, referring to this Perkins matter, whether Mr. Vertrees, by his questions, did succeed in making you believe that the acceptance of secret compensation by Mr. Perkins from the railroads was justifiable, either as a moral or administrative practice?

Mr. NEWELL. Not in the slightest.

Mr. PEPPER. I, Mr. Chairman, have here, not in connection with this testimony at all, a series of cross transfers, signed by the Auditor for the Interior Department, which have relation to settlements under the Indian cooperative contract. It may be recalled that the question of whether there had been such settlements of cross

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transfers came up at that time, and I undertook to look for them. We found a series of such cross transfers.

The CHAIRMAN. Have they come up from the department?

Mr. PEPPER. Yes; they came up from the department, and I will just offer them at this point.

The CHAIRMAN. If there is no objection they will be admitted.

(The cross transfers are as follows:)

CERTIFICATE OF SETTLEMENT.

No. 7614. Indian Settlements and Claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, Nov. 10, 1908.

I certify that I have examined an account to adjust differences existing between certain Interior and Agriculture department appropriations for expenses incurred by the Forest Service in connection with logging operations on the Menominee Indian Reservation, Wisconsin, during the 4th quarter, 1908, and find that there is due the appropriation "General expenses, Forest Service, 1908," the sum of one thousand five hundred forty-two and 56/100 dollars (\$1,542.56), payable from appropriations "Fulfilling treaties with Menomonees, Logs."

Let the necessary transfer and counter warrants be issued.

(Signed) R. S. PERSON,
Auditor

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT.

No. 9502. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, Feb. 26, 1909.

I certify that I have examined an account to adjust differences existing between certain Interior Department appropriations arising from expenditures made by the Forest Service for labor and materials upon the Nez Perces and Menominee Indian reservations from June 1 to August 31, and August 1 to December 31, 1908, respectively, and find that there is due the appropriations—

"General expenses, Forest Service, 1908".....	\$253.28
"General expenses, Forest service, 1909".....	6,381.47
	6,635.47
Payable from appropriations—	
"Indian moneys, proceeds of labor (Nez Perces)".....	\$565.87
"Fulfilling treaties with Menomonees, logs".....	6,049.73
	6,635.47

Let the necessary transfer and counter warrants be issued.

A. M. (Signed) R. S. PERSON, Auditor

The SECRETARY OF THE TREASURY,
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT.

No. 10175. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, April 7, 1909.

I certify that I have examined and settled a claim against the United States presented by Forest Service of Department of Agriculture for reimbursement of expenses incurred during August, September, and October, 1908, in fighting fires on the

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2039

d'Alene Indian Reservation, and find that there is due the said claimant the sum of two thousand one hundred ninety-two and 51/100 (\$2,192.51) dollars, payable from appropriation "Indian moneys, proceeds of labor (Coeur d'Alenes)."

Payment to be made by crediting appropriation "General expenses, Forest Service, 1909."

A. M.

(Signed)

R. S. PERSON, *Auditor.*

The SECRETARY OF THE TREASURY,
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT.

No. 10218. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, April 9, 1909.

I certify that I have examined and settled a claim against the United States presented by Forest Service, Department of Agriculture, for reimbursement of amounts expended for work done on the Klamath, Pine Ridge, and San Carlos Indian reservations from July 1 to November 30, 1908, and find that there is due the said claimant the sum of one thousand six hundred twenty-six and 16/100 (\$1,626.16) dollars, payable from appropriation—

"Indian moneys, proceeds of labor (San Carlos)"	\$300. 00
"Payment to Indians of Klamath Agency, Oregon"	878. 18
"Indian moneys, proceeds of labor (Pine Ridge)"	447. 98
	<u>1, 626. 16</u>

Payment to be made by crediting appropriation "General expenses, Forest Service, 1909."

A. M.

(Signed)

R. S. PERSON,
Auditor.

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT.

No. 10332. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, April 20, 1909.

I certify that I have examined and settled a claim against the United States presented by U. S. Forest Service, Washington, D. C., for reimbursement for amounts expended from December 1, 1908, to March 15, 1909, on the San Carlos Indian Reservation, and during January, 1909, on the Mescalero Indian Reservation, and find that there is due the said claimant the sum of three hundred seven and 30/100 (\$307.30) dollars, payable from appropriation—

"Indian moneys, proceeds of labor (San Carlos)"	\$300. 00
"Indian moneys, proceeds of labor (Mescalero)"	7. 30
	<u>307. 30</u>

Payment to be made by crediting appropriation "General expenses, Forest Service, 1909."

A. M.

(Signed)

R. S. PERSON,
Auditor.

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

2040 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

CERTIFICATE OF SETTLEMENT.

No. 10795. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, May 11, 1909.

I certify that I have examined and settled a claim against the United States presented by Forest Service, Washington, D. C., for reimbursement of amounts expended from Dec. 1, 1908, to March 31, 1909, on various Indian reservations, and find that there is due the said claimant the sum of seven hundred forty-nine and 55/100 (\$749.55) dollars, payable from appropriation—

"Payments to Indians at Klamath Agency"	\$297.50
"Indian moneys, proceeds of labor (Siletz Indians)"	81.48
"Indian moneys, proceeds of labor (San Carlos)"	14.85
"Indian moneys, proceeds of labor (Red Lake)"	355.72
	<hr/> 749.55

Payment to be made by crediting the appropriation "General expenses, Forest Service, 1909."

A. M.

(Signed) R. S. PERSON,
Auditor.

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT.

No. 10914. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, May 19, 1909.

I certify that I have examined and settled a claim against the United States presented by Forest Service, Washington, D. C., for reimbursement for services and expenses incurred during November, 1908, in connection with work on the Cœur d'Alene Indian Reservation, Idaho, and find that there is due the said claimant the sum of one hundred fifty and 10/100 (\$150.10) dollars, payable from appropriation "Indian moneys, proceeds of labor (Cœur d'Alene)."

Payment to be made by crediting appropriation "General expenses, Forest Service, 1909."

A. M.

(Signed) R. S. PERSON, Auditor.
By _____,
Deputy Auditor.

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT OF ACCOUNT.

No. 11087. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
June 2, 1909.

I certify that I have examined and settled an account between the United States and the Forest Service, Washington, D. C., for reimbursement for services rendered from December 1, 1908, to March 31, 1909, on all the Indian reservations where cooperative timber work has been conducted, and find that there is due the said claimant the sum of seven hundred sixty-one and 9/100 (\$761.09) dollars, payable from appropriations—

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2041

"Indian moneys, proceeds of labor (Chippewas of Lake Superior, Bad River)"	\$154. 50
"Indian moneys, proceeds of labor (Coeur d'Alene)"	10. 00
"Indian moneys, proceeds of labor (Flathead)"	10. 00
"Indian moneys, proceeds of labor (Klamath)"	10. 00
"Indian moneys, proceeds of labor (La Pointe, Lac Courte Oreille)"	31. 00
"Indian moneys, proceeds of labor (Chippewas of Lake Superior, Lac du Flambeau)"	61. 00
"Indian moneys, proceeds of labor (Leech Lake)"	25. 00
"Indian moneys, proceeds of labor (Menominee)"	185. 16
"Indian moneys, proceeds of labor (Nez Perce)"	20. 00
"Indian moneys, proceeds of labor (Pine Ridge)"	10. 00
"Indian moneys, proceeds of labor (Red Lake)"	50. 00
"Indian moneys, proceeds of labor (San Carlos)"	5. 00
"Indian moneys, proceeds of labor (Siletz)"	5. 00
"Indian moneys, proceeds of labor (Spokane)"	5. 00
"Indian moneys, proceeds of labor (White Earth)"	10. 00
"Indian moneys, proceeds of labor (Yakima)"	10. 00
"Care and protection of Indian timber lands, 1909 and 1910"	159. 43
	<hr/> 761. 09

Payment to be made by crediting appropriation "General expenses, Forest Service, 1909."

R. S. PERSON,
Auditor for the Interior Department.
By _____,
Deputy Auditor.

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT.

No. 11181. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, June 5, 1909.

I certify that I have examined and settled a claim against the United States presented by Forest Service, Department of Agriculture, Washington, D. C., for reimbursement of expenses incurred from October 1, 1908, to March 31, 1909, for work done on the Menomonee and Bad River Indian reservations, and find that there is due the said claimant the sum of two thousand six hundred twenty-two and 31/100 (\$2,622.31) dollars, payable from appropriation—

"Menominee log fund"	\$1,655. 34
"Indian moneys, proceeds of labor (Chippewas of Lake Superior, Bad River)"	966. 97
	<hr/> 2, 622. 31

Payment to be made by crediting appropriation "General expenses, Forest Service, 1909."

A. M. (Signed) R. S. PERSON, Auditor.
By _____,
Deputy Auditor.

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

2042 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

CERTIFICATE OF SETTLEMENT.

No. 11272. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, June 10, 1909

I certify that I have examined and settled a claim against the United States presented by Forest Service, Department of Agriculture, Washington, D. C., for reimbursement for work done during March and April, 1909, on the San Carlos Indian Reservation, Arizona, and find that there is due the said claimant the sum of one hundred fifty (\$150.00) dollars, payable from appropriation "Indian moneys, proceeds of labor (San Carlos)."

Payment to be made by crediting appropriation "General expenses, Forest Service, 1909."

R. S. PERSON, Auditor.
By _____, Deputy Auditor

The SECRETARY OF THE TREASURY,
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT.

No. 11801. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, July 9, 1909

I certify that I have examined and settled a claim against the United States presented by Forest Service, Department of Agriculture, Washington, D. C., for reimbursement for expenditures made during May, 1909, and from June 1 to 15, 1909, on account of work on the San Carlos Indian Reservation, Arizona, and find that there is due the said claimant the sum of seventy-eight and 20/100 (\$78.20) dollars, payable from appropriation "Indian moneys, proceeds of labor (San Carlos)."

Payment to be made by crediting appropriation "General expenses, Forest Service, 1909."

J. B. BELT,
Acting Auditor.
By _____, Deputy Auditor

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT.

No. 12086. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, July 30, 1909

I certify that I have examined and settled a claim against the United States presented by Forest Service, Department of Agriculture, Washington, D. C., for reimbursement of expenses incurred from June 1 to 22, 1909, on account of forestry work on the San Carlos Indian Reservation, Arizona, and find that there is due the said claimant the sum of fourteen and 85/100 (\$14.85) dollars, payable from appropriation "Indian moneys, proceeds of labor (San Carlos)."

Payment to be made by crediting appropriation, "General expenses, Forest Service, 1909."

R. S. PERSON, Auditor.
By _____, Deputy Auditor.

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT.

No. 12158. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, August 5, 1909.

I certify that I have examined and settled a claim against the United States presented by Forest Service, Department of Agriculture (transfer settlement), for reimbursement of expenditures made from June 1 to 30, 1909, on account of the services of James J. Woolsey in connection with the work on the San Carlos Indian Reservation, Arizona, and find that there is due the said claimant the sum of seventy-five (\$75.00) dollars, payable from appropriation "Indian moneys, proceeds of labor (San Carlos)."

Payment to be made by crediting appropriation "General expenses, Forest Service, 1909."

R. S. PERSON, Auditor.

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT.

No. 12398. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, October 4, 1909.

I certify that I have examined and settled a claim against the United States presented by Forest Service, Department of Agriculture, Washington, D. C., for reimbursements of amounts expended from April 1 to August 10, 1909, on account of work on the Klamath, Siletz, and Spokane Indian reservations, and find that there is due the said claimant the sum of two hundred two and 72/100 (\$202.72) dollars, payable from appropriation—

"Care and protection of Indian timber lands, 1909 and 1910".....	\$199.92
"Indian moneys, proceeds of labor (Spokane)".....	2.80
	<hr/> 202.72

Payment to be made by crediting appropriation "General expenses, Forest Service, 1909."

ROBERT S. PERSON, Auditor.
By J. B. BELT, Deputy Auditor.

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT.

No. 13215. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, October 22, 1909.

I certify that I have examined and settled a claim against the United States presented by Forest Service, Department of Agriculture, Washington, D. C., for reimbursement of expenses incurred from December, 1908, to June, 1909, in connection with forestry work done on various Indian reservations, and find that there is due the said claimant the sum of four thousand two and 61/100 (\$4,002.61) dollars, payable from appropriation

"Care and protection of Indian timber lands, 1909-1910".....	\$3,654.57
"Fulfilling treaties with Menominees, logs".....	348.04
	<hr/> 4,002.61

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Payment to be made by crediting appropriation "General expenses, Forest Service 1909."

R. S. PERSON,
Auditor

By J. E. R. RAY,
Acting Deputy Auditor.

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT.

No. 13302. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, October 27, 1909.

I certify that I have examined and settled a claim against the United States presented by Forest Service, Department of Agriculture, Washington, D. C., for reimbursement for expenditures for work done on the Moqui Indian Reservation, Arizona, from July 1 to August 6, 1909, and find that there is due the said claimant the sum of two hundred seventy and 88/100 (\$270.88) dollars payable from appropriation "Care and protection of Indian timber lands, 1909 and 1910."

Payment to be made by crediting appropriation "General expenses, Forest Service 1910."

ROBERT S. PERSON,
Auditor.

By J. E. R. RAY,
Acting Deputy Auditor

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

CERTIFICATE OF SETTLEMENT.

No. 14642. Indian settlements and claims.]

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, January 11, 1910.

I certify that I have examined and settled a claim against the United States presented by the Forest Service, Washington, D. C., for reimbursement of expenses incurred from December 1, 1908, to May 31, 1909, in connection with work on the Rosebud Indian Reservation, and find that there is due the said claimant the sum of four hundred twenty-four and 48/100 (\$424.48) dollars, payable from appropriation "Indian moneys, proceeds of labor (Rosebud Indians)."

Payment to be made by crediting the appropriation "General expenses, Forest Service, 1909."

J. B. BELT, *Acting Auditor.*
By ———, *Deputy Auditor*

The SECRETARY OF THE TREASURY
(Division of Bookkeeping and Warrants).

MR. VERTREES. Now, Mr. Chairman, there were some papers that there was some question about—that is, as to whether they were to be printed in full or not. A letter of Mr. Smith, Director of the Geological Survey, to Mr. Garfield, of June 2, inclosing copy of newspaper publications, and the reply of Mr. Garfield—I was under the impression that they had been offered and would be printed, but the stenographers were in some doubt about that matter. You will find in the record reference to them and extracts from them. Now

offer them and ask that they be printed. I thought they had been printed.

The CHAIRMAN. All of them?

Mr. VERTREES. You will recall these letters.

Mr. PEPPER. I think I do.

The CHAIRMAN. Those letters which you offer, Mr. Pepper, are admitted.

Mr. PEPPER. Thank you.

The CHAIRMAN. Those papers of yours, Mr. Vertrees, are admitted. (The papers are as follows:)

[Release Monday.]

POWER-SITE WITHDRAWALS.

PROMPT ACTION IN PROTECTION OF PUBLIC INTERESTS.

Acting upon the specific instructions of the Secretary of the Interior, the United States Geological Survey has begun the investigation of water-power sites on the public lands. Since April 23, the date of the Secretary's order, the Director of the survey has recommended 11 temporary withdrawals "in aid of proposed legislation affecting the disposal of the water-power sites on the public domain." These power-site withdrawals, aggregating 236,365 acres of public lands in the States of Utah, Colorado, Wyoming, Montana, Idaho, and Oregon, have been approved by Secretary Ballinger. The present policy is to protect the public interests, on the one hand, by promptly withdrawing from all entry all public lands containing possible power-sites and, on the other hand, by excluding from such withdrawals as far as information at hand warrants all areas of no value for power purposes but properly disposable under the agricultural and other public land laws.

The Director of the Geological Survey has assured the Secretary that the temporary withdrawals of water-power sites already made from data in the possession of the survey, together with such as will hereafter be made prior to the convening of Congress, will be ample to protect all the more important water-power sites undisposed of on the public domain and enable Congress to intelligently legislate for their disposition. Field plans provide for special investigation of withdrawals already made and for surveys along certain western rivers where further information or more exact data are desirable, in addition to the continuation of the regular river-flow observations, for all of which work the current appropriations provide.

Five of the 11 withdrawals already made include all the power-sites available in the areas that were withdrawn by Secretary Garfield and restored to entry by Secretary Ballinger last month. The present withdrawals, however, comprise a much smaller acreage, one-sixth or less of the areas of the corresponding earlier withdrawals. This reduction has been made possible in part by omission of lands patented or reserved prior to the original withdrawals, but more largely by the exclusion of land of no wise essential or useful to power development. The vacated withdrawals included large areas of public land of possible agricultural or mineral value at such distances from the rivers as to have absolutely no connection with the future development of the water resources. On the other hand, the revised withdrawals in the same regions in some instances cover power-sites missed by the earlier action. Thus in the case of the Salmon River in Idaho, where the original withdrawal totaled 2,560 acres, that based upon the recent recommendation of the Geological Survey includes 55,700 acres. A similar reduction holds for the Owyhee River in Oregon and in even greater measure for the Flathead and the Missouri and tributaries in Montana.

All the recommendations by the Geological Survey have been based upon official data already on file. The stream-flow records collected by the water resources branch of the survey and by the Reclamation Service constitute practically all the hydrographic information available for the public land States, stations on all the important rivers in these States having been maintained for a series of years for the purpose of determining the water available for irrigation. The topographic surveys which have been conducted by the Geological Survey for 30 years also furnish means of selecting without delay the sections of the rivers important for power purposes.

(From U. S. Geological Survey.)

JUNE 2, 1908

MY DEAR MR. GARFIELD: I sent you on Saturday night a copy of the statement which was given to the press at that time and which you may have seen also in some of the papers. I think the facts in the matter are pretty well set forth there, but of course there are many details that were omitted. Six of the withdrawals recommended by the Reclamation Service and approved by you in January and February were restored by Secretary Ballinger early in April, and these aggregate a little over 1,400,000 acres, while the revised list includes about one-ninth of that acreage. The method by which this reduction in acreage was accomplished was by securing from the Land Office the status of the land of the earlier withdrawals and then selecting for the recommended withdrawal only such non-patented land as might be, by any possibility, used in power development. The largest reduction was in the case of the Missouri and the Flathead rivers, where practically all of the land near the river has been patented. In the case of the Flathead, where the withdrawal recommended by the Reclamation Service amounted to 67,200 acres, the only land remaining unpatented comprises a few lots along the river opposite the national forest, the total acreage here being 135. On the Swan River there was found to be absolutely no land unpatented.

As Secretary Ballinger remarked to me, the earlier lists were not compiled with sufficient care, and this was especially true in the case of one river where three of the townships withdrawn are not even touched by the river, so that in making up the survey recommendation portions of three other townships had to be selected to cover that stretch of the river. I judge that this error was not of a clerical nature, but arose from using the Land Office state map instead of the township plats, there being the same difference between the two in this region. As far as possible, the effort has been to use the field men and their records in drawing up these recommendations, and my only regret is that it was not my privilege to place the survey's topographic and hydrographic records at your disposal as well as the services of Messrs. Veatch and Leighton last winter, when this work was first taken up.

Of course these details in the comparison between the two withdrawals are not mentioned outside the inner circle, but I feel that they constitute a sufficient answer to the critics who have condemned your successor for throwing back to public entry "five million acres" of land withdrawn for the protection of the country's water resources. While I doubt not these are those who have the intent of grabbing up the power-sites, I feel certain that they have not been able to accomplish anything during the interval between the restoration and the date of the revised withdrawal.

The other six withdrawals which I recommended between May 4 and May 7 include in the aggregate 82,561 acres on streams in western Utah, western Colorado, and Wyoming. These are streams that had not been considered, so far as I know, in any earlier recommendations, the selections being made by Mr. Leighton and the land lists prepared in the manner described above. It is my purpose to submit other recommendations of this nature from time to time, to the end that every power-site of which we have any knowledge or supposition may be temporarily withdrawn pending legislation.

You know that I take all law, except the geologic variety, only on hearsay. I think, however, that among those who pretend to know the law there is still a divergence of opinion on two questions: First, whether the Secretary of the Interior possesses any right to make even temporary withdrawals in aid of proposed legislation and second, whether or not a right is vested in the entryman which cannot be even temporarily set aside by a Secretary's order. But these questions are for others to answer and in the mean time several on the survey are considering what lands shall be recommended for withdrawals and what legislation providing for the future disposition of these power-sites should be suggested from the survey standpoint. I think a definite proposition can be put up to Congress in such form as to carry a reasonable expectation of passage.

The valuation plat for the Horseshoe Canyon Township was prepared yesterday and before forwarding it to the Land Office I submitted it to Secretary Ballinger. It involves the first case coming under the exception provided in our new act, namely, exceeding the maximum of \$300, where the extent and value of the coal beds are a matter of common knowledge. In this case our highest valuation reaches \$400 an acre. You will remember that on several acres the Government received royalty payments far in excess of this price, although only one or, at most, two beds had been mined, and in those the coal had not been extracted to the full extent planned. Some of this coal is valued at 3 cents a ton and some at 2 cents, but allowing for the reduction in price for second, third, and fourth beds, and also for the conservative tonnage estimates used in our calculations, I believe that sufficient coal could be mined from this land to bring the net cost of the land down to a basis of $\frac{1}{2}$ cent a ton of mined coal. At the prices placed upon this township, the total valuation is about \$7,800,000.

the forty per cent of the acreage, the title to which I suppose is still in the Government, will yield a handsome contribution to the reclamation fund if the land can be sold. I realize that the fight will be to keep up this policy of selling the coal lands at proper valuation. In the present case I was especially anxious to have a fair price put upon these Horseshoe Canyon lands in view of some newspaper criticism of your action in winning the lands back to the Government. You may not have seen the claims in question, the purpose of which was to minimize the importance of this case, and it was set forth that after the noise had subsided, the department would throw the lands open again to coal entry, and the former holders would have the opportunity to purchase them at merely nominal prices. Secretary Ballinger approved the prices determined upon, and the plats have gone forward for the making of photographic copies to be sent to the field offices. This reminds me that I discovered last week that you had directed me to furnish this valuation to the field offices by June 1, and through oversight your explicit directions in this regard were not followed. However, I took the matter up with Mr. Dennett in time for him to send telegraphic orders to the local officers to defer the restoration of these lands to entry to June 15. I am going to learn, if possible, what prices the Union Pacific people are placing on their railroad lands in Wyoming, with a view to using such information as an argument in answer to any criticism of the Government prices. I believe that sentiment on the public land question has reached the point where few will dare to come out into the open and criticize the department for selling its coal lands at market prices.

An unconscious little tribute came to us the other day in connection with the segregating of non-irrigable lands under the 320-acre homestead law when a Colorado representative, commenting upon the irregular outlines of the segregated areas in western Colorado, stated that he knew the reason for the omission of certain tracts, and when pressed for his inside information he answered that the lands omitted from this segregation were in fact irrigable lands. It has been a considerable satisfaction to me to see to what an extent the records that have been made for a number of years in connection with the survey's topographic and hydrographic work in the public lands States have been of value in the administration of this new law. However, as we naturally to be expected, there were many areas in which we found ourselves without exact data, although we had supposedly covered the areas in question.

Yours, very cordially,

GEORGE OTIS SMITH.

JAMES R. GARFIELD, ATTORNEY-AT-LAW,
931 GARFIELD BUILDING,
Cleveland, June 4, 1909.

MY DEAR MR. SMITH: I am very much obliged for your full report regarding the lower-site withdrawals. Of course, we all appreciated that the earlier withdrawals could necessarily have to be modified upon further and more detailed examination. I sincerely hope that nothing has been lost by the temporary restoration, and am very pleased that recent withdrawals have included additional sites.

The result of the coal revaluation is most gratifying.

Sincerely, yours,

JAMES R. GARFIELD.

Hon. GEO. OTIS SMITH,
U. S. Geological Survey,
Washington, D. C.

The CHAIRMAN. Have you any further questions to ask this witness, Mr. VERTREES?

Mr. VERTREES. No further questions.

The CHAIRMAN. Have you any further questions, Mr. Brandeis?

Mr. BRANDEIS. I have no questions to ask this witness.

(The witness was thereupon excused.)

The CHAIRMAN. Have you any other testimony to put in? We have about forty minutes left.

Mr. BRANDEIS. I have quite a number of documents which I would like to introduce, but I do not think it is necessary to read them. I think they should be introduced, and I will take this opportunity to do so.

The CHAIRMAN. You have no other witnesses here?

Mr. BRANDEIS. No, sir.

The CHAIRMAN. Have you any witnesses here, Mr. Pepper?

Mr. PEPPER. No, sir. You will remember that at the outset I stated to the committee that I wished to call Messrs. Garfield, Davis, and Newell. Those are the only witnesses that I have called or expect to call.

Mr. VERTREES. I would like if the gentlemen can give us some information as to the number of witnesses and the names of those witnesses that they will introduce.

Senator ROOT. Mr. Pepper says that he has no other witnesses.

The CHAIRMAN. What witnesses have you, Mr. Brandeis?

Mr. BRANDEIS. We expect to call Messrs. Birch and Steele next Friday, and we have a number of other witnesses who are here in rebuttal, and we may have one or two other witnesses, of which I will give notice next week.

The CHAIRMAN. Well, are the witnesses here—these other witnesses?

Mr. BRANDEIS. Yes, sir.

The CHAIRMAN. If they are not here, and you want them, you must let us know.

Mr. BRANDEIS. Certainly; I will let you know in time.

Senator SUTHERLAND. Do you expect to complete your case in chief by next Saturday night?

Mr. BRANDEIS. I expect to; yes, sir.

The CHAIRMAN. We will take in these documents here. Please submit your papers, Mr. Brandeis, to Mr. Vertrees.

Mr. BRANDEIS. Yes, sir.

The CHAIRMAN. I want to suggest here—can not we take this course, in order to save time: You submit to Mr. Vertrees your papers, and if there is no objection they will go in the record?

Mr. BRANDEIS. I see no reason for detaining you here any longer.

The CHAIRMAN. You can submit them to counsel on the other side, Mr. Vertrees, and his associates, and if you two agree they will go in the record.

(The papers are as follows:)

Mr. BRANDEIS. In connection with my call, dated March 5, 1910, on page 1513 testimony, for documents relating to the Cunningham claimants, or the so-called Glavis charges, not contained in Senate document No. 248, and in connection with my call for documents of the Attorney-General, dated March 15, page 1933, and reply thereto dated March 16, 1910, page 1933, I now introduce the following papers:

A.

HELENA, MONT., August 14, 1909.

DON M. CARR,
Care Secretary BALLINGER,
Billings, Mont.

Glavis Shaw Spokane-Review me assist-
See Krifac and Cyij article in cbegimo lofaoj thirteenth call on No for any accac-
ance can render other matter shape
dimso. I folest (falee) fifode edyal niddol in good cyibo.

SHARP, 1224 A.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2049

[In reply please refer to "P"-JTM.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 9, 1910.

HON. SECRETARY OF THE INTERIOR.

SIR: Referring to the communication of Private Secretary Don M. Carr dated March 7, 1910, relative to the request of the Joint Committee of Congress investigating the Interior Department and Forest Service, calling for paragraph 2, in part:

"also originals (and so far as originals are not available, copies) of all letters, telegrams, and memoranda and papers of, from, or to, or made by Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, and Carr (supplemented March 8 by names of McEniry and Murphy) dated, written, or made prior to September 20, 1909, not contained in Senate Document 248, relating to the Cunningham coal claims or the so-called Glavis charges, including among others the papers and memoranda submitted by them or any of them to the President or to the Attorney-General."

I have to advise you in reference to said paragraph that I have neither originals or copies of any letter, telegram, etc., to myself or from myself to either of said parties relating to the Cunningham coal claims or the so-called Glavis charges, not contained in Senate Document No. 248.

Very respectfully,

JOHN T. MURPHY,
Law Examiner, G. L. O.

AJK.

Personal.]

MAY 26, 1909.

MY DEAR MR. WICKERSHAM: I hand you herewith a formal letter, with exhibits attached, in connection with the Alaska coal-land entries, showing the coal-land laws and the attitude of this department, as expressed by its First Assistant Secretary; also the opinion of Judge Hanford, and a note of Mr. Finney, Assistant to the Secretary of the Interior.

This covers the matter about which Chief of Field Division Glavis spoke to you, and regarding which we had some conversation at the Metropolitan Club on yesterday.

Very truly, yours,

(Signed) R. A. BALLINGER, Secretary.

HON. GEO. W. WICKERSHAM,
The Attorney-General.

DEPARTMENT OF THE INTERIOR,
August 12, 1909.

To Hon. R. A. BALLINGER,
Secretary of Interior, Glendive, Mont.:

Schwartz Says newspaper man named Stevens story
Coyjildx just here. Cihc mojbibol nim minot cdoform states edelh about to be
published Cunningham coal matter, Alaska, reflecting
bupracyot concerning so-called Summamkyin seir niddol, Iricgi, lovroadamk on
Dennett, Pierce, you. Schwartz Glavis Dennett accusatory
Tommodd, Baolso, and heu. Coyjildx states krifac wrote Tommodd isucidelh
letter, forest officers Cunningham
roddol, and that velocd evvasolc recently examined Summamkyin papers, so any-
published comes that source. examined Cunnin-
thing bupracyot probably senoc from dyid ceulso. I have never ozinamot Summamk-
ham Pierce come Newspaper
yin matter, but will do so to-night. Will ask Baolso to seno in to-morrow. Mojbibol
men spoken matter emanates
nom have cbehom to me to-day on same line, and I am satisfied all niddol onimidoc
from here.
vlen yolo.

LAWLER, Assistant Attorney-General.

GLENDIVE, MONT., August 14, 1909

LAWLER, Assistant Attorney-General,
Washington, D. C.:

I refused to in any way consider Cunningham cases. See communication to Attorney-General and personal letters to Miles Moore, which demonstrate this.

BALLINGER, Secretary.

HOTEL DENNIS—WALTER J. BUZBY,
Atlantic City, N. J., August 14, 1909.

MY DEAR JUDGE: I came on here to rest for a couple of weeks; my nerves were in good shape. I am improving fast, however, and will soon be back at the desk.

Sorry I was out of town when the tempest broke. Schwartz has, however, handled it well. His statement was a good one and should put a spoke in the wheel of Pinchot's crazy friends. I have warned him to look out for any scrip entries which may have been made by Collins, and if possible to reject any such on the ground that power-site applications should be taken directly and not indirectly; that is, not as land but as sites. I do not know whether this will stick, but it is worth looking into.

On the coal question generally if they try to stir things up I have a very nice pickle for them. Garfield, acting under directions from Roosevelt, so Woodruff told me in Finny's presence, authorized and directed a favorable report on Mondell's bill to ratify all coal entries, however made, dummy or otherwise, in the hands of the present holders upon payment of new appraised price. I refused to agree, as I remember I wrote you at the time, though perfectly willing if the entries had been made by existent entrymen, but with the intent of combination. This report is a case, and I was afraid some one would rake it up for a scandal during the last campaign. I would not initial it. If they keep up I think I ought to allude to it in my next report to you, stating my unwillingness to go to that extent. We will then be able to discuss Roosevelt policies. By the way, there is a good deal of difference between a policy as intended and as administrated—between Roosevelt and Pinchot.

Best wishes.

Yours to the limit,

FRED.

WALTER J. BUZBY.

HOTEL DENNIS,
Atlantic City, N. J., August 19, 1909.

HON. R. A. BALLINGER,
Seattle, Wash.

MY DEAR JUDGE: There is a covert suggestion in one of the Washington papers: the effect that you were using your position as Secretary of the Interior to advance the interests of Alaska coal claimants. The most perfect refutation of this is the fact that you have always refused to have anything to do with these cases because of your past associations. Your position in this matter has been repeatedly expressed by me and to others in the department.

I send this to you in case you desire to use the statement at the coming convention in Seattle.

Respectfully,

FRED DENNETT,
Commissioner General Land Office

LET HIM FALL IN WITH THE GOVERNMENT POLICY.

Since the meeting of the National Irrigation Congress in Spokane there has apparently been raised a great hue and cry against the administration of R. A. Ballinger, Secretary of the Interior—and the cry has been that the Secretary is working in the interests of monopoly, and therefore against the interests of the people.

Perhaps there is no man in the country more capable of passing on this question than Col. Harvey W. Scott, of the Oregonian, who has been in the journalistic harness of the Pacific Northwest since 1865, and therefore knows every root and branch of this question. Therefore, harken unto Colonel Scott:

"The fight between Ballinger and Pinchot is a conflict between rival interpretations of the law—the one conservative, the other radical. This conflict comes down through several clashing years. The radical element, represented by Pinchot, has been 'holding up' the public domain, creating reserves and denying application of patents—most of these acts being at variance with strict readings of the law.

"Now the reaction has come, and President Taft, through his Secretary of the Interior, is pursuing a changed policy of administering the law as he finds it. This excites the rival element which has been accustomed to cast aside 'legal technicalities' when they stood in the way of its favorite method of 'saving' the public land and forest and stream 'to the people.' It asserts that the vital question is not whether lands were legally withdrawn from entry, but whether the interests of unborn generations are to be conserved and greed of the present generation is to be curbed.

"This plausible version of the law, the functions of the public domain, and the privileges of the present generation does very well within certain bounds. But it can easily go too far; its method depends on personal opinion, which is a variable quantity; it is something that strict rules of justice and political safety do not allow.

"There are hundreds of persons in Oregon to-day—yes, thousands—whose valid claims to land have been jeopardized by this policy, their applications denied or their patents withheld or canceled. All this is the result of the Pinchot method of administering the statutes. It is not strict application of the law, else the claimants would safely have had their land long ago.

"The new administration is taking the middle course between the old régime, wherein fraud and greed were rampant, and the Pinchot policy, which, while being useful to the country, has been pressed to the extreme limit and done much injustice. Mr. Ballinger has made plain that in this 'reaction' the designs of land and water grabbers will be resisted by the Government. But the Pinchot element at once rises in wrath to declare this new plan works in the interest of great land monopolies and water-power combines, and intimates the Secretary of the Interior is in the service of these interests, and that everybody who sides with Ballinger is their tool.

"It is not believable that the country as a whole will take this view. There is much to do in the great water-power undertakings throughout the West. These enterprises will not go forward while the Government retains the power sites, nor so long as it is impossible for individuals to acquire and dispose of the locations. It is stretching the law to withhold them from sale and use. The middle course which Ballinger is pursuing is the rational one in this matter. The Pinchot faction will gain nothing from charges of dishonesty and corruption. If Pinchot desires to continue being useful to the Government, his friends will have to cease this talk, and he will have to fall in with the Government's policy."

[Initialed "L."]

DEPARTMENT OF THE INTERIOR,
August 21, 1909.

To Hon. R. A. BALLINGER,
Secretary of the Interior,
Care Reclamation Service,
North Yakima, Wash.:

Information record Land Office this department
As matter of amvelnidaem, copy loselt rimt evvaso and dyac tobildnomd,
Cunningham matter forwarded messenger Chief Field Division
Summamkyan niddol, prepared and veljiltot by noccomkol to syaov vaort tafacaem
Sharp fielena hlm where deliver to you
cyilb, at Yoromi. Advise yan jyolo to torafol de heu.

(Signed) FRANK PIERCE, Acting Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., August 22-23.

To DON C. CARR,
Care R. A. Ballinger,
North Yakima, Wash.:

Sunday Evening Times has Beverly telegram John Hay saying understood Glavis saw President there two days ago and his report shows Secretary's action proper in Cunningham case. Do you know whether telegram is correct? Shaw has been absent several days and Johnson, of Chicago Tribune, has tip he met Glavis Chicago week ago. Sharp will deliver complete copies all records to you Thursday. Wire him your address for Thursday.

Acting Assistant Commissioner.

2052 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

WASHINGTON, D. C., August 22-23.

DON C. CARR,

(Care R. A. Ballinger), North Yakima, Wash.:

Sunday evening Danoc has pofolrh bafby weymyih filatining understood kritic
filaste papres there mafmutz ike and hagge report filosels persect action proper in
summan hgin bab fefa hoon know whether bai fenel febert shaw fekankap fabcan
several mutz and johnson of syasike D lapumo fikane dab habir nod kritic syasike joog
ike. Sharp fosi fedapt complete sebaoc all loseltc to hoop thursday. Bejah hafel
hopsa bec for Thursday. Febuilding.

PACARI.

HELENA, MONT., August 23.

DON M. CARR,

(Care Secretary Ballinger), North Yakima, Wash.:

Schwartz package me you delivery
Csyjldx wires that bisgike being sent hekto for hoon and directs immediate fedapty
you

where can hoon be reached August twenty-sixth.

SHARP.

Personal.]

NORTH YAKIMA, WASH., August 26, 1909.

MY DEAR FRED: Permit me to acknowledge your letters of the 14th and 19th in
respect to the coal-land cases. The matter is giving me no concern, either in respect
to the charges against me or against you, as there is no foundation whatever for them.
I have written Secretary Pierce respecting the advisability of peremptorily dismissing
Glavis. You will please see him, when he will take the matter up with you.

Sincerely, yours,

(Signed) R. A. BALLINGER,
Secretary.

Hon. FRED DENNETT,
Commissioner of the General Land Office,
Washington, D. C.

Personal.]

NORTH YAKIMA, WASH., August 26, 1909.

MY DEAR FRANK: I notice in press dispatches the purported controversy respect-
ing the coal-land cases in Alaska and also notice your statement of a few days ago
that the matter had been turned over to you and that I had taken no part in the con-
sideration of the Cunningham cases, in which you are absolutely correct. Glavis
called on me at Seattle and complained that Schwartz was forcing him to a hearing
before he was able to get the testimony fully in hand, as he was about to send a party
to Alaska to make further investigations. I suggested to him that if he thought best
to wire Schwartz suggesting such continuance as might be necessary. Any state-
ment Glavis makes to the contrary is a malicious fabrication, and I am now inclined
to think he called on me for the purpose of having an excuse to attack me in the mat-
ter. I have spoken to none of the parties connected with this case regarding the
same since being in the West. I refused, at Mr. Dennett's solicitation, to wire Mr.
Schwartz or have anything to do with the cases at Seattle, as he will advise you. In
answer to a message received from him in Oregon, I wired as follows:

"Considering my personal reluctance to direct proceedings in Alaska coal cases,
you should make necessary directions to Schwartz."

I very much appreciate the strong and straightforward manner in which you have
handled this matter. I write this to advise you of facts which have not been brought
to your attention. Mr. Massey writes me that he has given to Mr. Lawler a copy of
a letter of August 14, 1909, from Miles C. Moore, which I would like to have you see
in this same connection.

The President has requested me to accompany him on part of his itinerary through
the West, and, as I now figure it out, I will not be able to reach Washington before the
middle of October. I am spending practically all of my time in the field studying
irrigation projects and Indian reservations, etc.

In view of the insubordination of Glavis, and his willful and malicious attitude
toward his superiors, which he knows to be without justification in fact, I think he

ould be peremptorily removed from office. I would suggest, however, before taking any action, that you advise with Lawler, Dennett, and Schwartz respecting the same. I am of the opinion that it would be a healthful thing to rid the service of such a contemptible and lying subordinate. His going to the Attorney-General and, as I am informed by the President, without the knowledge of his superiors, his departure from his district for the East without leave, his attempt to affiliate in a hostile manner with another bureau against his superiors, knowing his action to be unwarranted by the records of record, is to my mind sufficient justification for his peremptory dismissal. Mr. Cole, the register of the Spokane land office, told me that Glavis was there a few years ago and told him in substance that he had better read the Chronicle of a certain date, if he wanted to see the Secretary roasted, indicating that he knew in advance that the publication was going to be. His correspondence with Shaw of the Forest Service was an act of insubordination. If he is not dismissed under the circumstances, may be well said that some of the parties whom he has attacked are afraid of him, as well as Commissioner Dennett, can well afford to defy him or any other person regarding our official conduct.

With best regards, sincerely, yours,

(Signed) R. A. BALLINGER.

HON. FRANK PIERCE,
Acting Secretary, Department of the Interior.

NORTH YAKIMA, WASH.,
August 27, 1909.

Acting Secretary PIERCE,
Interior Department, Washington, D. C.:

Advices indicate Summamkyin matter to be submitted to Papres. If so, wish letter from Governor Neelo and reply to same to accompany record; also letter from same duly mailed you Thursday. Massey can locate correspondence in confidential numbered files.

CARR.

NORTH YAKIMA, WASHINGTON,
August 27, 1909.

SCHWARTZ,
General Land Office, Washington, D. C.:

Package received. Persect wrote Pierce yesterday suggesting conference you respecting action to be taken in Krifac matter; also Pafgo and Pacal Padeta. Think our suggestion best and will endeavor forward supplemental letter soon. Do not permit hagglo fikacing nor fadest dlimcvol.

[Telegram.]

DEPARTMENT OF THE INTERIOR,
August 28, 1909.

CARR,
(Care Hon. R. A. Ballinger, Secretary of Interior),
Seattle, Wash.:

Cunningham cases received No statement given papers
Your telegram summamkyin sicoc losocafot. Me cdidonmd will be kafom bibolc
directed President Secretary. President sent copy Glavis statement
unless talocdot by blocatomd or coslodilh. Blocatomd has comd sebh krifac cdidonmd
Secretary, myself, Dennett, Schwartz, requested reply from each. Replies
o coslodilh, nhcorv, tommodd, and csyjildx, and loquocdot lobrh vlen oisy. Lobrace
prepared here ready September second. Moore's former letters
lobilol yolo will probably be loith cobdonpol cosemt. Neeloc velnol roddolc and
Secretary's reply thereto record vindication. Moore's
coslodilh lobrh dyolode make complete loselt fantasidaem. Will await neeloc
letter mailed Thursday.
odol niarot dyulctih.

FRANK PIERCE, Acting Secretary.

[Telegram.]

WASHINGTON, D. C., August 28, 1907

DON C. CARR,
(Care R. A. Ballinger),
Lincoln Hotel, Seattle, Wash.

Glavis President is
Krifac statement to papres fenel designedly untrue, as record sent you and additional other records in this office prove. Miles Taylor called upon me Thursday night and said Krifac fobasted to efoldem blaso that Papres fidipee bacti and the said remove Asst. Secy. of Int. Price Com. G. L. O. Schwartz is one filapsee he thought he ought fililo Pacal Persite Baolso, the Pafmlo, and Cayjildixidema. Glavis said President is that Krifac filapsee, quote, I think you ought go further, end quote, Papres filapsee you think Secretary Ballinger is Glavis answer zotzot hoon don't focoda Persect Pirramkol fenel involved zolzot and Krifac fadape. yes I do President answer Price hoc halor fefa and Prepres made no fadarp. Taylor informed me that Blaso thought I was ammesomd and Taylor added, quote, why don't you see Blaso, I think he will talk with you, end quote.

I told Taylor to fcepta blaso to go to you that we were all ammesomd and I did not want to focen to anyone. Stenographers omitted sentence in record I filed here. Please rewrite page one fifty one and after first sentence in my letter of September 2 add quote the affidavit is ingenious but not convincing although made after several weeks careful consideration by Cunningham and his attorneys end quote. The whole record proves the most absolute rectitude of persect my compilation of facts and related data is reduced much as possible but will reach macmu legal size pages via proper reference to record sent hoon in duplicate and exhibits.

SCHWARTZ

SEATTLE, WASH., August 29, 1907

Acting Secretary PIERCE,
Interior Department, Washington, D. C.:

Leaving for Washington to-night on Northern Pacific, No. 6, arrive Friday morning. Must see Lawler before his departure. Tekefre figgers summamkyim niddel.

BALLINGER

P-HHS.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
Washington, D. C., March 9, 1910

The Honorable SECRETARY OF THE INTERIOR.

SIR: I have the communication of Private Secretary Don M. Carr, of date March 1, 1910, directing me to comply with the request of the joint committee of Congress investigating the Interior Department and the Forest Service, with the following three numbered paragraphs:

"1. Original letter of L. R. Glavis to Commissioner, dated June 10, 1908.

"2. Original (or if original not available) copy of telegram of Oscar Lawler to H. H. Schwartz, to which telegram of Schwartz to Lawler appearing on page 99 of Senate Document 248 is a reply; also originals (and so far as originals are not available, copies of all letters, telegrams, and memoranda, and papers of, from, or to or made by Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, or Carr, dated, written, or made prior to September 20, 1909, not contained in Senate Document 248, relating to the Cunningham coal claims or the so-called "Glavis charges," including among others, all papers or memoranda submitted by them or any of them to the President or to the Attorney General.

"3. Original letter Glavis to Schwartz, dated November 22, 1907, heretofore known as the "Lawler letter."

Letter of June 10, 1908, called for in paragraph No. 1, together with affidavit thereto attached, are herewith submitted. It is respectfully recommended that this letter and affidavit, after they shall have served their purpose, be returned to the General Land Office at an early date.

As to paragraph No. 2, I have to advise you that there was neither telegram, letter, or other communication from Mr. Oscar Lawler to myself to which "telegram of Schwartz to Lawler, appearing on page 99 of Senate Document 248, is a reply."

I have also to advise you in reference to said paragraph No. 2, that I have neither original nor copies of any "letter, telegram, memoranda, and papers of, from, or to, or made by Messrs. Ballinger, Dennett * * * Lawler, Finney, or Carr, dated, written, or made, prior to September 20, 1909, and not contained in Senate Document 248," to myself or from myself to either of said parties, "relating to the Cunningham coal claims or the so-called Glavis charges, including among others, papers or memorandums submitted by them or any of them to the President or to the Attorney-General."

As to paragraph No. 3, I have to advise you that I have no personal recollection of the contents of the letter in question, and have absolutely no knowledge that the same was ever by me retained. The subsequent telegrams directing Mr. Glavis to report to Washington indicate the receipt of some such letter, but, being a personal letter, was undoubtedly destroyed by me. I am unable to state whether the copy quoted by Mr. Glavis on page 41 of the hearings record of January 28, 1910, is approximately correct, but I do not question the general correctness of that letter. I have not the original, I have no copy of it, I have no knowledge of the whereabouts of the original nor any copy, except the purported copy introduced by Mr. Glavis himself.

Respectfully,

H. H. SCHWARTZ,
Chief of Field Service.

cwn.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oreg., June 10, 1908.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: In compliance with your letter "P" HHS, dated June 4, 1908, I have the honor to transmit herewith my affidavit, corroborated by Special Agent Horace Tillard Jones, which I trust fully explains the manner in which I secured possession of the book marked "Journal," relating to the Cunningham group of coal claims.

I am at a loss to understand how Mr. Cunningham could charge me with having secured possession of said book without his knowledge and consent, as it will be seen that Mr. Cunningham loaned me the book, and if he was mistaken in the records which he loaned me, he could not have been when Mr. Jones called his attention to the fact that I was taking the book marked "Journal." It is also evident that he knew I had the book, for how would it have been possible for me to ask him concerning said journal when taking his affidavit, for in his affidavit mention is made thereof.

Respectfully,

L. R. GLAVIS, Chief Field Division.

STATE OF OREGON, County of Multnomah, ss:

L. R. Glavis, having been first duly sworn, on oath deposes and says:

I am special agent of the General Land Office, with headquarters at Portland, Oreg.; that about 9.30 a. m. on the 6th day of March, 1908, at Seattle, Wash., I called upon Clarence Cunningham, agent for a number of Alaska coal-land entymen; I introduced myself to Mr. Cunningham, telling him I was a special agent of the General Land Office, and had under investigation the coal-land entries made by himself and others for whom he was agent. Special Agent Horace Tillard Jones accompanied me and was present during the interview. I likewise introduced Mr. Jones to Mr. Cunningham, telling him that he was also a special agent. Mr. Cunningham stated that he was glad I was giving the matter attention and offered to assist me in every way. He stated at that time he understood complaint had been made that the Guggenheim interests were backing these coal claims. I told him I was unable to state just what the charges were, but that I had secured certain statements of expenditures alleged to have been made by him as agent for the claimants, and that if I could examine his books and check the statements therein with the circular letters of expenditures that this would be good evidence that the Guggenheim interests were not interested. Mr. Cunningham then stated that he would be glad to allow me to examine his books and took Mr. Jones and I to his library, and there showed us

a number of papers and books, and in his presence I examined the journal and ledger kept by him. I stated to Mr. Cunningham that the papers which I had desired to check with the books were downtown and secured his permission to take the books in order that I might compare the same, which he willingly granted. In preparation to leave I put the journal book in my pocket, and Mr. Jones took the ledger. Mr. Jones then asked what book I had and whether I desired to take both of the books. I stated that I had the journal and I thought it would be best to take both of them as it would probably save time. Mr. Cunningham was present and heard this conversation.

We again met Mr. Cunningham, as per appointment, at the Ranier-Grand Hotel at 4 o'clock the same afternoon, at which time I stated to him that I had not yet been able to check the information I desired from the books, but returned the ledger to him and asked his permission to take the journal, together with other papers which he loaned me, to Portland, which he agreed to. I then took his affidavit concerning the coal claims, at which time we again discussed the journal and he mentioned the same in his affidavit, copy of which is hereto attached.

L. R. GLAVIS

Subscribed and sworn to before me this 11th day of June, 1908.

[SEAL.]

JOSEPHINE A. PATTEN,
Notary Public for Oregon

STATE OF OREGON, County of Multnomah, ss:

Horace Tillard Jones, after being first duly sworn, on oath deposes and says:

I am a special agent of the General Land Office; that I have read the foregoing affidavit made by L. R. Glavis, and I know of my own personal knowledge that all the statements made therein are true.

HORACE TILLARD JONES

Subscribed and sworn to before me this 11th day of June, 1908.

[SEAL.]

JOSEPHINE A. PATTEN,
Notary Public for Oregon

P-WSB.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 9, 1910.

The honorable SECRETARY OF THE INTERIOR.

SIR: I have the communication of Private Secretary Don M. Carr, dated March 1910, relative to the request of the joint committee of Congress investigating the Interior Department and the Forest Service.

Paragraph 2 calls for "Also originals (and, so far as originals not available, copies of all letters, telegrams, and memoranda and papers of, from, or to or made by Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, or Carr (supplemented March 8 by the names of McEniry and Murphy), dated, written, or made prior to September 20, 1909, not contained in Senate Document 248, relating to the Cunningham coal claims or the so-called Glavis charges, including, among others, all papers or memoranda submitted by them or any of them to the President or to the Attorney-General."

In response thereto I inclose herewith telegram dated July 21, 1909, from Mr. Schwartz to myself and translation of the same; telegram dated July 22, 1909, from myself to Mr. Schwartz and translation thereof. These two telegrams were not filed with any of the Alaska papers. I also inclose letters from M. D. McEniry to myself, dated September 4, 1909, and September 10, 1909, each inclosing newspaper clippings.

This constitutes all the papers called for in said paragraph to myself or from myself to either of said parties relating to the Cunningham coal claims or the so-called Glavis charges not contained in Senate Document 248.

Very respectfully,

FRED DENNETT,
Commissioner.

RSC.

[Telegram.]

WASHINGTON, D. C., July 21, 1909.

Commissioner FRED DENNETT,
(Care Special Agent Glavis),
Federal Building, Seattle, Wash.:

Zyda Cyij filatins iricgi velocd evvasolc fidageing ficepo summamkyin yoilamk toberl that yoilamk is niddol of cusy losomd doroklibyas itxso tookrifac that iricgi velocd evvasolc seurt med be facitaed dyoloev figosa kr fac to ozbriam Jyh habir yic farnohd jady cyij foteles to amcbosd figgers and varoc jarr focede blebol isdaem in dyid lokilt.

SCHWARTZ, Acting Asst. Comm'r.

2.34 p. m.

Shaw says Alaska forest officers protesting present Cunningham hearing. Suggest that hearing is matter of such recent telegraphic advice to Glavis that Alaska forest officers could not be advised thereof. Require Glavis to explain why he has communicated with Shaw wishes to inspect reports and files. Will take proper action in that regard.

SCHWARTZ.

[Telegram.]

SEATTLE, WASH., July 22, 1909.

H. H. SCHWARTZ,
Acting Assistant Commissioner General Land Office,
Washington, D. C.:

Macis Krifac wired Cyij asking hafel seno yolo assist in sicoc rimt being part in velocd. Cyij wired unable seno also wired Pesupe Portland. Rij evvasolc sino fafino Krifac. Herse roddol macto ozbriamc wire hekto em losoabd. Halor fosi fejus Portland mafis and fikere yolo ferade hoon if hoon focoda pocd to seno annotaidorh.

Commissioner.

[Translation.]

SEATTLE, WASH., July 22, 1909.

H. H. SCHWARTZ,
Acting Assistant Commissioner General Land Office,
Washington, D. C.:

Sixteen Glavis wired Shaw asking him come here assist in cases land being part in forest. Shaw wired unable come also wired forest supervisor Portland. Law officer came to consult Glavis. My letter 19 explains wire me on receipt. I will go Portland 26 and return here meet you if you think best to come immediately.

Commissioner.

[The Denver Republican, Denver, Colo., September 4, 1909.]

WILL KILL SNAKES, HE DECLARES—SIGNIFICANT THREAT IS MADE BY SECRETARY BALLINGER—HE WAS DISCUSSING PINCHOT AND ALASKA—WILL GO OVER RECORDS IN CUNNINGHAM COAL CASE AND THEN VISIT PRESIDENT.

WASHINGTON, September 3.

"Incidentally," said Secretary Ballinger at the close of the first day after his hurried trip from the Pacific coast, "I intend to kill some snakes."

The remark was made in response to questions relative to the Ballinger-Pinchot controversy regarding water-power plants, the Cunningham Alaskan coal entries, and other conservation matters.

Illustration used by the Secretary was drawn from an incident in his own life when some twenty-odd years ago as a cowboy at Medicine Lodge he found the night camp infested with rattlers and killed 12 of them.

SHOWS NO PERTURBATION OVER GLAVIS CHARGES.

[Special.]

WASHINGTON, September 3.

If Secretary Ballinger is at all disturbed over charges made to President Taft by Special Agent Glavis and said to implicate various Interior Department officials in an alleged Alaskan coal-land scandal, he failed to disclose perturbation either by word or appearance when he arrived this morning direct from Seattle.

Inasmuch as President Taft has called for a complete record of the Cunningham coal-land entries, Secretary Ballinger feels he can not discuss this all-absorbing topic at this time, but intimates that after the President has gone over the records a statement will be forthcoming from some authoritative source that will leave no doubt in the public mind as to what is what and why. That statement will dispose of the sensational reports recently published.

CONFERS WITH SUBORDINATES OVER THE CUNNINGHAM CASE.

Secretary Ballinger devoted the entire day to conferences with officers of his department who have been at work on the Cunningham report, and as soon as it is complete he probably will take it direct to Beverly. What that report will contain can not be ascertained, for it is guarded sacredly. That it will clear the Interior Department of charges preferred by Special Agent Glavis is almost a foregone conclusion. In that event, Glavis, by reason of his very insubordination, will probably fall.

For some motive not made clear, Glavis aligned himself against the present heads of the Interior Department and with the cause of Pinchot, bureau chief in another department. Many statements heretofore published derogatory to Ballinger have been in traced back either to Glavis or to officers of the Forest Service, with whom he communicated more freely than with his own superior officers. In fact, Glavis, it is found, has withheld much information regarding the Cunningham cases from his own department, though furnishing full reports to Pinchot, with whom he has no official relation and to whom he is not supposed to report.

FOREST SERVICE MADE THE CHARGES IN COAL CASE.

It was from the Forest Service that the statement emanated charging Ballinger, Dennett, and others with unduly expediting the Cunningham entries with a view to wrongfully issuing patents. The report which goes to President Taft, it is understood, will show that evidence has been on hand for eighteen months justifying the department in the belief that the Cunningham entries were made in violation of law and that this evidence was all gathered or submitted by Glavis. Yet Glavis has time and again demanded postponement of the hearings, ostensibly that he might strengthen the Government's case against Cunningham. His real object was not until recently suspected.

Hearings in the Cunningham cases have been tentatively set to begin at Seattle October 15. Cunningham and his associates being agreeable to that arrangement. At that hearing Glavis will represent the Interior Department, as he is more familiar with the facts and evidence than anyone else, but Special Agent Sheridan, who recently was sent to Seattle, will conduct the Government's case at these hearings.

WHY SHERIDAN WAS CHOSEN TO CONDUCT COAL HEARING.

Sheridan was chosen for this work because he is an accomplished attorney, experienced in coal-land cases. Glavis is not an attorney.

Other matters besides the Cunningham entries will engage Secretary Ballinger's attention while here. He probably will remain in Washington a week or ten days after his conference with the President. In the statement which he issued to-day he said he would return to the West and during the fall complete his tour of irrigation projects in the Southwest.

"When this work is completed," he said, "I will be prepared to report to the President my views respecting advancement of the public service in so far as the Interior Department is concerned."

This is taken to mean that he will not formally recommend appointment of a new director of the Reclamation Service until next fall, though it is confidently expected in official circles that such recommendation will then be made and that a change will take place, as Newell seems to be slated to go. Other officers of the service are also expected to be let out about the same time.

REFUSES TO EXPLAIN HIS SNAKE-KILLING THREAT.

Mr. Ballinger refused to explain the purport of his remark about killing snakes and declined further to discuss the matters in controversy between his department and the Forestry Bureau.

"Manifestly," he said, "it would be improper for me to talk on this subject. The heads of the various divisions involved have all prepared their reports and I expect to submit the whole question to the President at an early date. I could not, therefore, go into the subject at this time further than to say my previous knowledge of the situation, with the information I have derived to-day from the perusal of the reports of Messrs. Pierce, Dennett, and Schwartz justifies the statement that this department has nothing to fear from the closest scrutiny of its officials."

Mr. Ballinger said he had no doubt that a full statement of the matter would be given to the public at an early day.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, 712-14 E. & C. BUILDING,
Denver, Colo., September 4, 1909.

HON. FRED DENNETT,
Washington, D. C.

DEAR MR. DENNETT: It seems that the cabal which is trying to besmirch the characters of the Secretary and yourself, and to discredit the work that our department is doing in Alaska, has taken it as a matter of course that Mr. Ballinger, on his arrival in Washington, would have some statement to make through the Associated Press. To offset this, they framed up the atrocious story that went out from Beverly last night, wherein by innuendo they try to make it appear that criminal proceedings are to be initiated against some of the officials of our department. To offset, too, anything that they imagined Mr. Ballinger might say about the Forest Service, they unmasked themselves when they stated specifically that they "predict with assurance that Gifford Pinchot will remain in office during the Taft administration."

I inclose herewith an article from this morning's Rocky Mountain News, containing this fake story from Beverly, after which is given Mr. Ballinger's statement sent out by the Associated Press from Washington. I also inclose the article from the Denver Republican, giving in full Mr. Ballinger's statement. I sincerely trust that before the Secretary gets through with this proposition, the people responsible for these thoroughly nasty and disreputable statements that have been given to the press during the past two weeks with respect to him, you, Messrs. Pierce and Schwartz, will be shown up, and that if they are officials of this administration, they will be given short shrift to private citizenship.

Haven't been saying anything here for the last two weeks to the newspapers on this proposition; but it has been hard work to keep still, for I would certainly like to throw a few bombs into some of these people who are trying to save themselves by attacking our department.

With kind regards, I am, sincerely, yours,

M. D. McENIRY.

[The Rocky Mountain News, Denver, Colo., Saturday, September 4, 1909.]

BALLINGER WILL BE DISMISSED, DECLARE ADHERENTS OF PINCHOT—LAND FRAUDS GIVEN AS CAUSE—SECRETARY DECLARES THAT HE WILL "KILL SOME SNAKES" AND EXPECTS TO STAY ON THE JOB—FRIENDS OF PINCHOT WHO ARE CLOSE TO PRESIDENT TAFT SAY SECRETARY BALLINGER WILL BE RETIRED BECAUSE OF ALASKAN COAL-LAND FRAUDS—BALLINGER DECLARES THAT HE WILL "KILL SOME SNAKES" AND HAS NOTHING TO FEAR.

[Special to the News.]

BEVERLY, MASS., September 3.

Criminal proceedings and indictments that will involve the names and possibly the integrity and liberties of several men of very high standing in the Government seem inevitable as a result of the investigation President Taft has ordered made of the handling of the Cunningham and other alleged fraudulent claims to southern Alaska coal lands.

Men who claim to possess inside knowledge of the situation as it concerns both the Alaska cases and the general conservation programme predict with assurance that Gifford

Pinchot will remain in office during the Taft administration. Friends of Pinchot positively assert that within the very near future Richard A. Ballinger, Secretary of the Interior, will either retire or be retired from the Taft Cabinet, together with the other members of the Ballinger camp.

President Taft, according to the Chief Forester's friends, is in possession of facts concerning the connection of attachés of his administration with the Cunningham and other Alaskan claims, which have forced his serious consideration. The facts are said to be ugly and to be backed up by documentary evidence of the strongest kind. It is claimed by the Pinchot adherents that the President will have to dismiss Ballinger.

In the case of the coal lands in the Katalla fields, it is alleged, dummy entries were used in the interest of the smelting trust.

KILL SNAKES—BALLINGER READY FOR BATTLE WITH PINCHOT, BUT WILL NOT TALK AT THIS TIME.

WASHINGTON, September

"Incidentally," said Secretary Ballinger at the close of the first day after his hurried trip from the Pacific coast, "I intend to kill some snakes."

The remark was made in response to questions relative to the Ballinger-Pinchot controversy regarding water-power plants, the Cunningham Alaskan coal entries, and other conservation matters. The illustration used by the Secretary was drawn from an incident some twenty-odd years ago, when as a cowboy at Medicine Lodge he found the night camp infested with rattlers, and killed 12 of them.

Ballinger refused to explain the purport of his remark, and declined further to discuss the matters in controversy between his department and the Forestry Bureau.

"Manifestly," he said, "it would be improper for me to talk on this subject. The heads of the various divisions involved have all prepared their reports, and I expect to submit the whole question to the President at an early date. I could not then go into the subject at this time further than to say my previous knowledge of the situation with the information I have derived to-day from the perusal of the reports of Pierce, Dennett, and Schwartz justifies the statement that this department has nothing to fear from the closest scrutiny of the conduct of its officials."

CONFERS WITH LIEUTENANTS.

Ballinger passed much of the day in conference with Assistant Secretary Pierce, Commissioner Dennett, Schwartz, and Assistant Attorney-General Lawlor.

The remainder of the time was given to reading the reports of his subordinates. Ballinger said he had no doubt that a full statement of the matter would be given to the public at an early day.

Ballinger has been absent for more than two months, the greater part of which time he has spent in a tour of inspection through the West. He gave careful attention to conditions in Yellowstone Park, and went over a large number of irrigation projects and Indian reservations. He probably will join Taft at Beverly and proceed with him to Seattle.

Regarding his tour he said:

"With the consent of the President I left Washington the latter part of June for the purpose of investigating the reclamation projects, Indian reservations, and national parks, as well as matters pertaining to the public lands.

BUSY WITH RECLAMATION.

"During my absence I have visited 12 reclamation projects. I anticipated a Senate Committee on Irrigation on its trip of examination through Montana and the State of Washington. I expect to return to the West in two or three weeks, making further investigations, as I have not yet covered the Southwestern States and Territories. When this work is completed I will be prepared to report to the President my views regarding the advancement of public service in so far as the Interior Department is concerned.

"The work of reclaiming the arid lands and the semiarid lands as carried on by the Reclamation Service is of vast importance to the West. I have also been studying with great interest the conservation of the natural reservoirs so far as they are affected by the Interior Department, and it is my purpose to extend and perfect such methods as are possible under the law."

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2061

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
712-714 E. & C. BUILDING,
Denver, Colo., September 10, 1909.

Mr. FRED DENNETT,
Washington, D. C.

DEAR MR. DENNETT: I inclose herewith a special printed in this morning's Denver Republican in re the Cunningham coal cases and the position reported to have been taken by the President. Of course, it is entirely as we expected, but it is good to see this in the paper after all the rot that has been published during the past month and which the enemies of our department were responsible for.

Here's hoping that before the Secretary gets through with the proposition that the bunch that has been responsible for these baseless charges against him, you, and Harry Schwartz will be thoroughly cleaned out.

Quite a number of Denver gentlemen called at the office to-day, as well as stopping me upon the street, and seem very glad that Mr. Ballinger and you and our department have come out of the scrap in such flying colors. It is a dirty shame that such a thing as this had to come up; but seeing that it did come up, it is good to know that the people responsible for it have been so completely routed.

Sincerely, yours,

M. D. McENERY.

ALL OFFICERS ARE EXONERATED BY PRESIDENT—TAFT SUSTAINS INTERIOR DEPARTMENT IN ALASKAN COAL CASE—SPECIAL AGENT GLAVIS, WHO MADE THE CHARGES, IS TO BE DISMISSED—ATTORNEY-GENERAL REPEATS THAT COOPERATIVE PLAN IN IRRIGATION WORK IS ILLEGAL.

[Special.]

WASHINGTON, September 9

President Taft completely sustains the Interior Department in its handling of the Cunningham coal-land cases in Alaska, and exonerates Secretary Ballinger, Land Commissioner Dennett, and Chief Special Agent Schwartz of charges brought against them by Special Agent L. R. Glavis, the man who for eighteen months has been collecting evidence against the Cunningham entrymen.

This being true, Glavis finds himself entirely discredited with the administration, and it is anticipated that he will soon be dismissed or his resignation demanded. Had Glavis's charges been substantiated, Ballinger, Dennett, and Schwartz would have had to retire; Glavis having fallen down in his accusations, the fate which he intended to deal out to his superiors will fall to his own lot.

PRESIDENT TO ISSUE STATEMENT SOON.

It is understood that in a few days President Taft will issue a statement at Beverly giving the salient facts in the Cunningham coal-land matter, so far as the officials of the Interior Department are involved, and that this statement will completely answer the numerous inspired accusations emanating from the Forest Service which recently have been made against Secretary Ballinger and land office officials.

Simultaneously with that statement the President is expected to announce his decision with regard to Glavis.

There is now in possession of the Government a great mass of evidence, which will be produced with view to securing cancellation of the Cunningham coal entries, and this evidence is so complete that it is no longer considered necessary to retain Glavis in order that he may participate in the hearings to begin at Seattle October 15

CAN USE EVIDENCE GLAVIS COLLECTED.

This evidence was largely collected by Glavis and, being in written form, can be presented at the hearing and will have the same weight as though Glavis participated in the hearing as one of the government's prosecutors. If need be, Glavis, though dismissed, can be summoned as a government witness, and in that capacity can swear to the authenticity of his reports and give such other testimony as might be deemed desirable. In the event of Glavis's dismissal the Cunningham cases probably will be prosecuted by Special Agent Sheridan, who since July 1 has been studying the evidence in these cases, preparing to act as chief prosecutor for the Government.

NO MORE COOPERATION IN IRRIGATION WORK.

Secretary Ballinger to-day received from Attorney-General Wickersham a second opinion holding that the cooperative plan of building government irrigation projects is illegal.

Under this plan settlers were permitted to aid in building canals, laterals, etc., and were paid in certificates, which later were to be accepted by the Government from settlers in payment for water rights in lieu of cash.

Secretary Ballinger says no further certificates will be issued, but that all outstanding certificates heretofore issued by the Reclamation Service will be redeemed at the full face value and paid in cash as quickly as money is available in the reclamation fund. He expects all such certificates to be redeemed soon.

BILLINGS, MONT., August 15, 1899.

MY DEAR MR. LAWLER: Your letter of August 5 reached me at Glendive. I have asked Mr. Newell and Mr. Davis to take up the objections to the Lake Tahoe contract, and either themselves prepare or cause to be prepared a complete statement respecting each of the objections advanced, as requested by you.

Director Smith, of the Geological Survey, spoke to me at Spokane in reference to Mr. Mondell's desire to have certain lands classified within the double homestead act. I think he will communicate with Mr. Veach, and as I understood him, he was inclined to believe the land should be classified as urged by Mr. Mondell.

In reply to your letter of August 7, relating to the situation at Imperial, Cal., a committee waited upon me at Seattle, and I took the matter up with Mr. Deming, and it was understood that Mr. Schwartz would be permitted to proceed according to the former understanding, the whole matter to be worked out by Satterwhite. I am not sufficiently familiar with the conditions to give any advice.

I also note what you say in your letter of the 7th instant in reference to the redemption of the balance of T. 45 N., R. 62 W., in Wyoming, which is spoken of elsewhere. I wired you yesterday with regard to the Cunningham coal entries in Alaska that I had, since assuming office, taken no part in the disposition of these cases, and directed that they be handled entirely by the Commissioner of the General Land Office. Secretary Pierce without conference or consideration by me in any respect, as I considered that my relation to the matter while out of office rendered it improper for me to have any connection with the cases. The record is clear in this respect, and I discussed the matter with the President at the time I showed a letter to him from Mr. Miles Moore and my reply thereto, and I also advised with the President in reference to sending up certain questions to the Attorney-General, which were transmitted over the signature of Secretary Pierce.

From information coming to me, it would appear that Chief of Field Division is endeavoring to make trouble for his superior officers without any justification whatever for his acts. I wish you would speak to Mr. Schwartz regarding this matter, and see that a full investigation of Mr. Glavis's conduct in this matter is had.

I have seen the deluge of inspired matter that has gone out through the press, while I am, of course, annoyed at the falseness of it, I am content to abide the result as shown upon the record and as exists in fact. The agitation may prove in the long analysis beneficial; and the result will necessarily, in view of the facts if properly presented, wholly exonerate the department from any blame or censure whatever.

I sincerely appreciate your activity in bringing to the front the truth and have (as I have said before) the utmost confidence in you.

Sincerely, yours,

R. A. BALLINGER,
Secretary

HON. OSCAR W. LAWLER,
Assistant Attorney-General, Department of the Interior,
Washington, D. C.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2063

List of Alaska coal claims in the Katalla district other than those set forth in the report of Agent H. T. Jones, dated August 13, 1907.

[Sen. Doc. 248, p. 453.]

Applicant.	D. S.	Serial.	Agent.	Address.
Smith, James	572	01013	Thurston, L. A.	(?)
Thurston, W. L.	573	01014	do.	(?)
Fletcher, E. M.	574	01015	do.	(?)
ngamells, Herbert	611	0237	Brown, Raymond	(?)
Willson, Hiram A.	612	0245	do.	908 Eighty-fourth street, North Seattle.
Miller, Geo. W.	613	0272	do.	(?)
Sach, Mrs. Cora A.	614	0238	do.	515 Sheridan avenue, Spokane.
Forse, Wm. H.	615	0259	do.	201 Granite Building, Spokane.
Wallace, Isaac D.	616	0277	do.	(?)
Peterson, Peter	617	0279	do.	(?)
Nich, Geo. A.	618	0253	do.	(?)
Salnave, Hester A.	619	0283	do.	114 North Pittsburg street, Spokane.
Willson, Anna M.	620	0246	do.	2920 Post street, Spokane.
White, Freeman E.	621	0239	do.	(?)
Lyphert, Chas. B.	622	0273	do.	County treasurer's office, Spokane.
Hondt, Edw.	623	0234	do.	1304 Modelin street, Spokane.
Kay, Harvey	624	0241	do.	(?)
Farinel, Chas. L.	625	0275	do.	(?)
Miller, Mrs. Kate	626	0247	do.	E. 2218 Pacific avenue, Spokane.
Power, Chas. A.	627	0266	do.	R. F. D. 3, Spokane.
Johnson, Susie	628	0287	do.	(?)
Jones, Otis L.	629	0235	do.	209 East Fourth avenue, Spokane.
Hasbender, Peter L.	630	0276	do.	(?)
Harard, Francis W.	631	0244	do.	(?)
Purry, Geo. W.	632	0262	do.	501 First avenue, South Seattle.
Springsted, Wm.	633	0278	do.	(?)
Hamilton, John O.	634	0281	do.	324 Kuhn Block, Spokane.
Lullivan, Catherine	635	0280	do.	(?)
Spelman, Wm. P.	636	0298	do.	P. O. box 1049, Spokane.
Sach, Wm.	637	0254	do.	(?)
Hamilton, Gus R.	638	0282	do.	(?)
Griffith, Anna B.	639	0258	do.	(?)
Griffith, Jas. E.	640	0263	do.	(?)
Parks, Henrietta	641	0256	do.	Marshall, Wash.
Cartwright, Mrs. Estelle	642	0243	do.	E. 2207 Pacific avenue, Spokane.
Stine, Frederick M.	643	0255	do.	518 Riverside avenue, Spokane.
Smith, Adda B.	644	0271	do.	P. O. Box 1191, Spokane.
Salnave, Hugh L.	645	0248	do.	322 White Building, Seattle.
Willson, Oscar J.	646	0249	do.	E. 2318 Fifth avenue, Spokane.
Westland, John	647	0261	do.	E. 2004 Fourth avenue, Spokane.
Spangler, Frank	648	0240	do.	(?)
Lawley, Patrick R.	649	0260	do.	400 Division street, Spokane.
Hamilton, Emma	650	0257	do.	324 Kuhn Block, Spokane.
arker, Wm. R.	651	0274	do.	(?)
Farinel, Floyd L.	652	0252	do.	(?)
McDonald, John W.	653	0251	do.	(?)
Willson, Robinson H.	654	0232	do.	2920 Post street, Spokane.
Farinel, Marie L.	655	0499	Dunn, Wm. L.	(?)
velson, Wm. D.	656	0500	do.	E. 122 Nora avenue, Spokane.
Burns, Robt. H.	657	0501	do.	(?)
Young, Jas. W.	658	0502	do.	(?)
Mirich, Orpha	659	0503	do.	E. 213 Ermina avenue, Spokane.
Trison, Bror G.	660	0504	do.	Fifth and Sherman, Spokane.
Mirich, Clarence L.	661	0505	do.	(?)
Jenningsen, Henry	662	0506	do.	(?)
Hanson, Lars J.	663	0507	do.	(?)
Berger, John	664	0508	do.	1823 College avenue, Spokane.
Boettner, Chas. E.	665	0509	do.	Do.
Brumbeller, Daniel M.	666	0510	do.	(?)
Das, Alex. D.	667	0511	do.	1814 Fifth avenue, Spokane.
Artinson, Anthony	668	0512	do.	Post Falls, Idaho.
Young, Lillian	669	0513	do.	(?)
Jones, Geo. A.	670	0514	do.	308 Granite Block, Spokane.
Alchem, Mrs. Arizona	671	0515	do.	(?)
schilling, Frederick	672	0516	do.	(?)
Mirich, Evelyn	673	0517	do.	(?)
Lawrence, Geo. E.	674	0518	do.	(?)
Mirich, Wm. N.	675	0519	do.	(?)
Fullall, John M.	676	0520	do.	(?)
Hart, Lafayette S.	677	0521	do.	(?)
Estelbury, Jos.	678	0522	do.	(?)
Berger, Lucinda	679	0523	do.	(?)
Hart, Florence	680	0524	do.	(?)
Nashburn, Emma	681	0525	do.	(?)
Hitch, Annie	682	0526	do.	(?)
Hitch, Wm. G.	683	0527	do.	3264 Riverside avenue, Spokane.
Schaefer, Eugene G.	684	0528	do.	(?)
Ware, Samuel Miller	685	0529	do.	2603 Hamilton street, Spokane.

2064 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FOREST.

List of Alaska coal claims in the Katalla district other than those set forth in the report of Agent H. T. Jones, dated August 13, 1907—Continued.

Applicant.	D. S.	Serial.	Agent.	Address.
Oelschlaegel, Robt.	686	0530	do.	E. 727 Chandler avenue, Spokane.
Drumheller, Jerome L.	687	0531	do.	(?)
Henningsen, Henry	688	0532	do.	(?)
Krause, Richard M.	689	0533	do.	(?)
Coogrove, Ella	690	0534	do.	Leon Hotel, Spokane.
Telshman, Herman	691	0535	do.	(?)
Luding, Chas.	692	0536	do.	(?)
Hetherington, Jas. A.	693	0537	do.	(?)
Henningsen, Emma	694	0538	do.	(?)
Sainave, Geo. L.	695	0233	Brown, Raymond.	(?)
Dille, Melvin B.	696	0270	do.	(?)
Sainave, Abram M.	697	0260	do.	114 North Pittsburg street, Spokane.
Walker, Lew.	698	0242	do.	54 East Thirty-first street, Portland.
Stewart, Dayton	699	0284	do.	(?)
Parks, Jesse T.	700	0255	do.	Marshall, Wash.
Kettelson, Theodore	701	0470	Hartline, John W.	Fairbanks, Alaska.
Lingle, Mary E.	702	0471	do.	Rossland, British Columbia.
Baker, John W.	705	0236	Brown, Raymond.	(?)
Brown, Sam'l. M.	706	02-9	do.	(?)
Willoughby, J. E.	723	0498	Willoughby, A. L.	(?)
Winckler, Gus W.	724	01067	(?)	(?)
Williams, Ida M.	726	01069	Willoughby, O. L.	(?)
French, Walter M.	728	01071	do.	(?)
Sweeney, John.	729	0555	Flynn, T. J.	(?)
Tauberg, Frank	730	0550	do.	(?)
Reese, Robert.	734	01075	(?)	(?)
Willoughby, O. L.	738	01078	(?)	Katalla, Alaska.
Worthington, John A.	740	0472	Hartline, John W.	Anna, Ill.
Casper, Stephen D.	741	0473	do.	Do.
Kirby, F. M.	768	01069	Willoughby, O. L.	(?)
Kaschenbach, John	769	01080	do.	(?)
Freare, Andrew M.	770	01091	do.	(?)
Schulz, Henry T.	771	01082	do.	(?)
Stagmaier, Fred J.	772	01093	do.	(?)
Welgand, John C.	773	01094	do.	(?)
Casper, Chas. C.	774	01095	do.	(?)
Davis, Edw. W.	775	01096	do.	(?)
Douglas, Francis	776	01097	do.	(?)
Mooney, Henry F.	777	01098	do.	(?)
Reyburn, Orville	848	0360	Morrow, F. A.	(?)
Morrow, Hattie	849	0361	do.	(?)
Isaman, Sarah	899	0362	do.	(?)
Isaman, L.	900	0363	do.	(?)
Kiley, W. B.	901	01100	Barrett, G. T.	(?)
Meyher, Thos. F.	902	01101	do.	(?)
Kelly, Patrick F.	903	01102	do.	408 Cedar street, Minneapolis. Minn.
Clancy, Peter J.	904	01103	do.	711 Marshall avenue, St. Paul. Minn.
Barrett, John D.	905	01104	do.	1776 Gerard avenue, Minneapolis. Minn.
McElhone, Phillip	914	0364	Morrow, F. A.	(?)
Ballinger, Webster.	903	0365	do.	(?)

APRIL 24, 1908.

HON. FRED DENNETT,
Commissioner General Land Office, Washington, D. C.

MY DEAR FRED: Mr. Thomas J. Long has just called upon me and exhibited to me the decision of the General Land Office, letter C, of March 27, 1908, in the matter of the appeal of Gustavus S. Kendall v. Minnie S. Long from the Olympia land district reversing the action of the local offices.

I am satisfied from conversation with Mr. Long, and after looking over numerous affidavits which he has shown me, that he is absolutely in the right in this matter and the decision of the assistant commissioner above referred to would operate as a great injustice upon his wife. The appellant in this case is shown by credible witnesses to have been a barkeeper in Aberdeen for the past two years, maintaining his family residence there throughout the entire time. I am satisfied that a rehearing ought to be ordered in this case to give Minnie S. Long an opportunity to clear up the injustice attempted to be perpetrated by the appellant and the wrong that will result to the entrywoman in case your decision is to stand. I would not write you or have anything to do with this matter did I not thoroughly believe that the Government was being imposed on as against the interest of people who are entitled to this land.

I have refused to represent Mr. Long or Mrs. Long in appearing before the department, and I am writing this to you personally, so that you may take such steps as may be necessary, without being in any sense prejudiced by what I may have said, to see that no wrong is done this entrywoman.

Yours, sincerely,

OFFICE OF THE COMMISSIONER,
DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 30, 1908.

Hon. R. A. BALLINGER, *Seattle, Wash.*

MY DEAR JUDGE: I am in receipt of your letter of the 24th instant relative to the case of *Gustavus S. Kendall v. Minnie S. Long*, the subject of a decision of this office on the 27th of last month.

I note what you say with respect to the showing which has been made to you on behalf of Mrs. Long. Apparently it is her purpose to apply for a rehearing or a review of our action, which would be the proper course for her to take if she desires a further consideration of the case here. If this course is taken, the case will be given most careful attention. On the other hand, the ordinary course for her to take would be by way of appeal to the Secretary of the Interior.

Very truly, yours,

(Signed) FRED DENNETT, *Commissioner.*

BK

I had Judge Proudfit examine case; not being satisfied with his report I looked into it myself. It is my impression that the proper procedure would have been to have ordered testimony taken as to the fact of residence of Kendall. The register and receiver erred on law points in their decision. She had *better file* motion for review.
F. D.

HOUSE OF REPRESENTATIVES, UNITED STATES,
COMMITTEE ON THE PUBLIC LANDS,
Washington, D. C., March 21, 1908.

Hon. R. A. BALLINGER,
901 Alaska Building, Seattle, Wash.

MY DEAR MR. BALLINGER: I have yours acknowledging receipt of printed copies of hearings. I am inclosing herewith two copies of my coal-land bill which I introduced after several conferences with the Secretary and Mr. Woodruff. My understanding was that the main features of this bill would be acceptable to the Secretary. I find, however, that there is something of a disposition to further insist upon inserting a permissive provision for leasing.

I am not, as you know, favorable to the leasing idea, and, further, I have called the Secretary's attention to the fact that if any provision was made for leasing it would probably necessitate the fixing of a maximum price in order to remove the possibility of so high a sale price being fixed on coal land as to compel leasing.

My thought has been that if the main features of this legislation were acceptable we might adopt the same as the basis for Alaskan coal legislation, with such additional provisions relative to unsurveyed lands and for the completion and confirmation of entries heretofore made as might be necessary.

You will note that the bill in its main features is in line with the suggestions made by you in regard to this class of legislation. I should be pleased to have an expression of your opinion in regard to it.

With assurances of very highest regard, I am, yours, respectfully,

(Signed) F. W. MONDELL.

MARCH 30, 1908.

MY DEAR MR. MONDELL: Your letter of March 21, inclosing two copies of H. R. 19421, duly received. I note what you say in respect to there being a disposition on the part of the department to insist upon inserting in your bill a permissive provision for leasing coal lands. I do not look with favor upon the plan of disposing of coal lands under a leasing method, and I presented to your committee, on March 3, in succinct form my reasons for a preference for a method of selling the deposit as against the method of leasing. It might, however, be feasible to dispose of the deposits on a maximum royalty basis, but I have not given this phase of the matter sufficient study to be willing to express an opinion.

Respecting your bill above mentioned, I am impressed with the belief that it is not advisable to patent any title to the surface except for town-site or manufacturing purposes, but that a grant of an easement in the surface to the extent of not exceeding one-quarter of the total lands entered by any one entryman to be selected in legal subdivisions by operators during the existence of the coal deposit is sufficient.

I also note that there is no provision in your bill to force development or mining of coal, so that the deposit would not lie dormant at the will of the owner, but I am

not satisfied that any mischievous results would follow from the omission of such provisions. The same is true as to provisions relating to supervision by the Secretary of the Interior.

Your bill, as I understand, is intended to be applicable only to the States and Territories, and not applicable to the District of Alaska. If I am correct in this assumption, I would suggest that a provision be inserted specifically declaring that the act is not intended to apply to the District of Alaska.

I am confident that the main features of your bill present the wisest method of disposing of the remaining unappropriated coal lands and would be pleased to see this session of Congress enact a law embracing this method of disposition of coal deposits.

The provision relating to purchase by the Government strikes me with much favor, but I think the same should be guarded so as to give to mine operators a method of selling to the Government, which would be freed from arbitrary and unreasonably low prices. The appeal to the Court of Claims is a long and tedious process, and I fear would result in much dissatisfaction. I would suggest the matter be left to appraisement by a board of disinterested persons to be designated in the act.

I have been unable to give a careful study to this matter since receiving your letter, and the foregoing is the result of a hurried examination of your bill and letter and I trust the same may be of some value to you.

I wish to say in addition to the foregoing that since arriving in Seattle I have had numerous conversations with men interested in the development of the coal fields at Catalla, Alaska, and from the character of the coal, its accessibility, and its need for private and public consumption on the Pacific coast, an emergency exists for such legislation and departmental action as will speedily permit this field to be developed and equipped with transportation and mining machinery to supply the demand for naval and domestic consumption.

With best regards, I remain, yours, very sincerely,

HON. FRANK W. MONDELL,
Chairman Committee on the Public Lands,
Washington, D. C.

C.

Personal.]

THE SECRETARY OF THE INTERIOR,
Washington, May 26, 1909

MY DEAR MR. WICKERSHAM: I hand you herewith a formal letter, with exhibits attached, in connection with the Alaska coal land entries, showing the coal-land laws and the attitude of this department, as expressed by its first assistant secretary, the opinion of Judge Hanford, and a note of Mr. Finney, assistant to the Secretary of the Interior.

This covers the matter about which Chief of Field Division Glavis spoke to you, and regarding which we had some conversation at the Metropolitan Club on yesterday.

Very truly, yours,

R. A. BALLINGER, *Secretary.*

HON. GEO. W. WICKERSHAM,
The Attorney-General.

[LLB—E. C. F.]

DEPARTMENT OF THE INTERIOR,
Washington, May 26, 1909

THE ATTORNEY-GENERAL.

SIR: The general coal-mining laws of the United States, as embodied in sections 2347, Revised Statutes, et seq., were extended to the District of Alaska by act of Congress approved June 6, 1900 (31 Stat., 658). No entries were made under the provisions, the principal reason being that entry under the sections specified is confined to surveyed lands, and the public surveys have not been extended to Alaska.

April 28, 1904 (33 Stat., 525), an act was passed amending said act of June 6, 1900, and providing a method for the surveying and patenting of coal claims in Alaska.

Section 4 of the last-mentioned act, however, provided that all the provisions of the coal-land laws of the United States not in conflict with the provisions of this act should continue to be in force in Alaska.

A large number of locations of and applications for coal lands were made in Alaska under the provisions of these laws, and against many of them it was charged by special agents of this department that agreements had been entered into prior to entry. This condition arose partly from the fact that 160 acres, the maximum area enterable by an individual, was too small to constitute a workable coal mine, especially in Alaska.

May 28, 1908, Congress passed an act entitled "An act to encourage the development of coal deposits in the Territory of Alaska." Section 1 of said act permitted the consolidation of single claims, locations, or entries, to include not exceeding 2,560 acres of contiguous lands and the entry of same by associations or corporations, with the condition that corporations applying for consolidated claims under the act must show at not less than 75 per cent of their stock is held by qualified entrymen.

This department has been asked whether entries may be completed and patents issued under said act of May 28, 1908, in cases where some one of the following irregular or illegal agreements or conditions existed on May 28, 1908:

1. A verbal or written agreement between two or more entrymen made prior to the initiation of the entry, that upon payment for the land and issuance of a cash certificate the entries should be transferred to a single company or corporation, and the different entrymen to accept stock in said corporation in payment for the land.
2. A contract conveying said lands to a company or corporation in which the entryman had or expected to receive stock in payment for the lands.
3. Entries made under an agreement to convey, and conveyance made to a company or corporation, which company or corporation now offers to make cash entry under the act of May 28, 1908, by consolidating the said claims or locations so made.
4. A verbal agreement by two or more entrymen, made prior to the initiation of the entry, that upon issuance of patent the entries would be consolidated and mined at the joint expense of each claimant, share and share alike.

In the opinion of this department any of the agreements described in paragraphs 1, 2, and 3 above would constitute a violation of the general coal-land laws, as extended to Alaska by the act of April 28, 1904. See in this connection decision of Circuit Judge Hanford in the case of *United States v. Portland Coal and Coke Company*, copy herewith; *United States v. Trinidad Coal Company* (137 U. S., 160), and *United States v. Keitel* (211 U. S., 370), but the view of the department as expressed in letter to the Commissioner of the General Land Office, May 19, 1909, is that the act of May 28, 1908, was a curative act, to be liberally construed, and that entries sought to be perfected under the act of 1908, where the only objection is an agreement of the character specified in the paragraphs quoted, may be accepted and passed to patent.

In view of the importance of the matter involved, and that it may be authoritatively decided before entries are made and passed to patent under the act of 1908, I have the honor to request that you advise me upon the questions presented.

I inclose for your information and use in consideration of the matters (a) a copy of the coal-land laws and regulations thereunder, on pages 12 to 24, inclusive, of which will be found laws and regulations peculiarly applicable to Alaska; (b) copy of letter of First Assistant Secretary to the Commissioner of the General Land Office, dated May 19, 1909; (c) copy of decision of Judge Hanford, hereinbefore described; (d) memorandum prepared in this office relative to construction of act of May 28, 1908.

Very respectfully,

FRANK PIERCE,
First Assistant Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, August 27, 1909.

THE ATTORNEY-GENERAL.

SIR: Hereto attached find clipping of article from the Washington Post of Thursday, August 26, 1909, in which there is set forth copy of communication signed by the First Assistant Secretary of the Department of the Interior of date May 19, 1909, bearing the initials K. M. T., F. W. C., and E. C. F., and addressed to the Commissioner of the General Land Office; also copy of excerpts from your opinion in the matter of so-called Cunningham coal locations and entries in Alaska.

This department is anxious to ascertain the source from which the letter and excerpt upon the opinion referred to were obtained by the newspaper, and I therefore inquire as to whether the same or either thereof were given out by or through your office.

Thanking you in advance for the information, I remain, very respectfully,

FRANK PIERCE,
Acting Secretary.

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[OJF-JBR]

DEPARTMENT OF JUSTICE, August 28, 1909.

The SECRETARY OF THE INTERIOR.

SIR: In reply to your communication of the 27th instant, inquiring if certain letters or excerpts from an opinion of the Attorney-General in the matter of the so-called "Cunningham coal locations and entries" in Alaska were given out by or through this office, I have the honor to state that they were not given out by this department, in fact, a copy of the letter of May 19, 1909, referred to, is not in our files.

Very respectfully,

Acting Attorney-General.

PORTLAND, OREG., March 22, 1909.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: Pursuant to the instructions contained in your telegram of the 10th instant, calling for report of the present status of investigations of all Alaska coal entries, I have the honor to report in reference to the coal declaratory statements made by Clarence Cunningham as agent, and known as the "Cunningham group," involving the following coal declaratory statements:

Coal declaratory statements.	Date filed.	Claimant.
No. 154.....	February 21, 1906..	Orville D. Jones.
No. 156.....	do.....	C. Cunningham.
No. 161.....	do.....	A. B. Campbell.
No. 171.....	May 9, 1906.....	John G. Finch.
No. 178.....	May 3, 1906.....	Frank F. Johnson.
No. 158.....	February 21, 1906..	B. Nelson.
No. 184.....	May 9, 1906.....	Alfred Page.
No. 180.....	February 26, 1906..	Chas. J. Smith.
No. 169.....	February 21, 1906..	Henry White.
No. 181.....	do.....	Frederick Burbridge.
No. 163.....	do.....	H. W. Collins.
No. 175.....	do.....	John G. Cunningham.
No. 244.....	March 9, 1906.....	E. J. Cunningham.
No. 186.....	February 21, 1906..	Fred C. Davidson.
No. 165.....	do.....	Michael Doneen.
No. 159.....	do.....	Horace C. Henry.
No. 155.....	do.....	Francis Jenkins.
No. 183.....	do.....	Arthur D. Jones.
No. 185.....	do.....	Fred H. Mason.
No. 176.....	do.....	Frank A. Moore.
No. 168.....	do.....	Fred Cushing Moor.
No. 172.....	do.....	Miles C. Moore.
No. 162.....	do.....	Walter B. Moore.
No. 180.....	do.....	Ignatious Mullen.
No. 182.....	March 21, 1906.....	Joseph H. Neill.
No. 186.....	February 27, 1906..	Reginald E. Neill.
No. 167.....	February 26, 1906..	Byron C. Riblet.
No. 165.....	February 21, 1906..	Chas. Sweeney.
No. 173.....	do.....	W. M. Baker.
No. 179.....	do.....	Henry Wick.
No. 174.....	do.....	Wm. E. Miller.
No. 153.....	March 9, 1906.....	W. H. Warner.
No. 177.....	February 21, 1906..	Hugh B. Wick.
No. 170.....	October 10, 1905..	Wm. H. Batting.

A brief history of the investigation of these cases is as follows: In the spring of 1907 former Special Agent H. K. Love commenced an investigation, but owing to his political ambitions and his intimate friendship with some of the persons involved, Special Agent Horace Tillard Jones was directed under date of June 21, 1907, to make a thorough and complete investigation of these cases, and during the summer of 1907, both special agents Jones and Love commenced their investigations, but I have been verbally informed by Mr. Jones that later verbal instructions were received at Seattle directing them to only make a preliminary investigation with a view to determining what future action should be taken. In the course of this investigation, many affidavits were secured, but owing to Mr. Jones's unfamiliarity with the Alaska coal land laws, he was only partially successful in securing evidence showing the true situation. Mr. Love was either also unfamiliar with the coal-land laws or was so prejudiced in favor of the claimants, that he likewise failed to secure any damaging evidence.

While I was in Washington during the month of December, 1907, I verbally advised the office that a conspiracy existed involving nearly all the Alaska coal entries, and that the entries were not made for the individual use and benefit of the claimants, but with the object of combination so as to acquire more coal land than allowed by law. All the Alaska coal cases were shortly thereafter placed under my supervision with instructions to make a thorough investigation. During the months of April and May I commenced this investigation and secured about 200 affidavits, but before sufficient time was allowed to complete this work I was directed to postpone taking further action. As I advised you by wire, would greatly lessen the Government's chances of securing sufficient evidence to cancel these fraudulent applications.

Before this work was discontinued the affidavits of Clarence Cunningham, H. W. Collins, Henry White, Horace C. Henry, Frederick Burbridge, Miles C. Moore, Arthur

Jones, Fred H. Mason, Orville D. Jones, Frank F. Johnson, F. Cushing Moore, Chas. J. Smith, Fred C. Davidson, W. H. Warner, Henry Wick, and Michael Doneen were taken, copies of which are hereto attached and extracts thereof are as follows:

Clarence Cunningham states: "I then returned to Wallace, Idaho, and interested my friends in joining me in making further investigation; ten of those interviewed came interested and contributed \$500 each for the purpose of further exploiting the fields. We then decided to secure coal filings on the land. In the meantime I interested about twenty other persons, all of whom have since made coal entries for 80 acres each; each of the entrymen contributed about the same amount of money, amounting to approximately \$4,000 each. This money was spent in developing the fields as a whole, completing trails to the coal fields, uncovering coal veins upon the various claims, building houses, etc. * * *

"We have had no written agreement whatever with any corporation, and the only understanding which we have had is that among ourselves; we have had an understanding that when patents had been secured we would form a company for the development of the coal fields, but none of the claims were taken up for the benefit of a corporation, but merely with the idea that when title was secured we would combine our claims and work the coal field for ourselves. We have always proceeded with that end in view."

H. W. Collins states: "We have understood among ourselves that when title was secured we would form a company and combine the entire group."

Henry White states: "The money was expended by Cunningham in developing the coal claim as a whole. I only attended one meeting of the coal claimants, which was not held; the formation of a company was not formally discussed, but I understand that the question of getting together and putting in a railroad in connection with our claims has been discussed informally among the claimants. Cunningham has had absolute control over the disbursement of moneys that I have paid in on this land."

Horace C. Henry states: "We have understood among ourselves that when title was secured we would form a company and combine the entire group."

Frederick Burbridge states: "We have understood among ourselves that when title was secured we would form a company and combine the entire group."

Miles C. Moore, Arthur D. Jones, and Fred H. Mason, all state: "We have understood among ourselves that when title was secured we would form a company and combine the entire group."

Orville D. Jones states: "Cunningham was agent for 31 other entrymen who, like myself, advanced various sums of money; the money was expended by Cunningham to develop and improve the coal fields as a whole. * * * The matter of the formation of a company was never formally discussed at any of our meetings, but we have discussed this question among ourselves, as we were well satisfied that we could not handle the claims individually. * * * We have therefore understood among ourselves that when title had been secured we would form a company and combine the entire group."

Frank F. Johnson and F. Cushing Moore certify that affidavit of Orville D. Jones is true with respect to their claims also.

Chas. J. Smith states: "We have understood among the entrymen that when title was secured we would probably form a company for the operation of the entire group on the grounds of economy."

Fred C. Davidson, W. H. Warner, and Michael Doneen all state: "We have understood among ourselves that when title was secured we would form a company and combine the entire group."

In addition to the affidavits secured I secured numerous circulars and exhibits, with which you are partially familiar, showing the fraudulent character of this group of entries. Reference is particularly had to the journal book kept by Clarence Cunningham, the agent of these claimants, which shows conclusively that they were being worked for the mutual benefit of each other, share and share alike, and on the first

page thereof is an agreement, "Whereby each of said subscribers shall have a claim of 160 acres recorded in his name and will own the same individually until such time as title can be secured for same. After this is done each subscriber agrees to deed his interest to the company to be formed for the purpose of developing and marketing said coal and receive stock in said company in payment for same, and it is further agreed that each subscriber shall have one-eighth of his stock issued to Clarence Cunningham in consideration of his services in securing said land. * * *

In carrying out the above plan the following subscribers paid amounts as follows, those paying first getting in at a lower rate than when options were paid and surveys made." The journal book thus shows that in accordance with this agreement they continued to make payments up to and including December, 1907, and were evidently still carrying out this unlawful agreement. The original journal was forwarded to you with the recommendation that certified copies be made, and I respectfully ask that I be furnished with this certified copy when adverse proceedings are brought.

I have not been advised whether this group intend to consolidate their claims in accordance with the act of Congress approved May 28, 1908, but since said act is only for the benefit of bona fide coal entries any entry fraudulently obtained and subject to cancellation can not be considered as bona fide entry, and therefore could not be allowed the benefit of said act. I state these filings were fraudulently obtained, because if the facts admitted by the agent of the claimants and the claimants in their affidavits hereto attached had been set out in the declaratory statements filed in the Land Office the same could not have been accepted and allowed without violating the statute. The facts so far obtained relative to this group of filings are identical to the case of *United States v. Trinidad Coal and Coke Company* (137 U. S., 160), and in this case the court held:

"It is true in the present case that some of the persons who made the entries in question were not, strictly speaking, members of the corporation, but only its employees. But as they were parties to the alleged scheme and were, in fact, agents of the defendant in obtaining from the Government coal lands that could not rightfully have been entered in its own name, that circumstance is not controlling. * * *

There is, consequently, in view of all the allegations of the bill, no escape from the conclusion that the lands in question were fraudulently obtained from the United States."

Your attention is also respectfully invited to the decision by the Supreme Court in the case of *United States v. Keitel et al.*, which is another similar case to the one involved. The facts and evidence in this case place it in the same category with the *Portland Coal and Coke Company* case, involving coal lands in the Vancouver district, which I investigated several years ago and in which suits were instituted in the United States circuit court for the western district of Washington. This case was recently decided by Judge Hanford on bills and answers. In the answers of some of the defendants in this case they deny the charges of conspiracy and fraud; deny that there was an agreement preceding the entry made in their names binding them to convey the title or hold it in trust, and deny that the United States has had any right to or interest in the property subsequent to the issuance of the patent to them. They admit, however, that it was their "expectation * * * that the lands * * * should be developed and exploited at the joint expense of the entrymen thereof, and that the proceeds of all mineral extracted or taken therefrom and sold should be used for the payment of the expense of development and exploitation and for the payment of the expense of operation, and that when said lands should have been entered * * * the said lands * * * should be developed and exploited and the mines thereon operated for the benefit of all said entrymen, share and share alike." They also aver that they acted under the advice of counsel and believed, and now believe, that a combination of individuals for the purpose of cooperation in acquiring and operating coal-mining property at the joint expense of all and for the sharing of profits equally is not contrary to law. The court decided this case in favor of the United States and held, in part, as follows:

"Considered in its entirety, this answer is a virtual confession that they, the answering defendants, voluntarily associated themselves with others to acquire tracts of land in severalty, but to be held for the joint benefit of all in equal shares, and the only actual opposition to the granting of the decrees demanded by the Government is this contention of these two defendants, that the pooling scheme above outlined is not contrary to the statute. * * *

If the scheme was not unlawful, each member of the combination would have a legal right to compel his fellow-members to hold each and every tract for the benefit of all and to have an accounting of all profits derived from mining operations in each and every tract, although the legal title might be retained by the individual members in severalty. So that the object of the combination was to acquire coal land in excess of 320 acres for an association, although the law fixes the maximum quantity at 320 acres."

This decision has not been reported, but I have heretofore furnished the office with a copy thereof.

Those interested in acquiring these coal lands are presenting the argument that by withholding title the Government is delaying developments in Alaska and preventing cheap coal from being placed on the market on the Pacific coast. As a matter of fact this is untrue, for the reason that the coal mines in the Cascade Mountains are offering their coal for sale at Seattle much cheaper than the coal mined in southwestern Alaska is being offered at Katalla, the nearest town. Furthermore, there would be greater criticism and more just criticism for the administration to allow patents to issue for these coal lands which the evidence shows to have been fraudulently made with the intention of consolidation and monopoly.

In the course of investigation heretofore made I was greatly embarrassed in my work by reason of the fact that many of the claimants appeared to be fully informed as to recommendations previously made by me and concerning the work which I had been directed to perform. It will readily suggest itself, no doubt, that one is greatly handicapped by being confronted with such a condition, and I respectfully recommend that hereafter due care be taken to prevent the claimants or anyone interested from knowing what has been done or is contemplated.

In view of the foregoing and from my general knowledge of the Alaska coal-land cases, I believe further investigation should be made with a view to the cancellation of the entries.

Respectfully,

Chief Field Division.

STATEMENT BY H. H. SCHWARTZ, CHIEF OF FIELD DIVISION.

[Alaska coal land act, May 28, 1906.]

ANALYSIS OF THE ACT, AND SUGGESTIONS AS TO DEPARTMENTAL CIRCULAR TO BE ISSUED, AS TO CORPORATIONS.

First proposition.—The act applies to "all persons, their heirs or assigns, who have in good faith personally or by an attorney in fact made locations of coal lands" in their own interests prior to November 12, 1906, or in accordance with departmental circular.

There are two parts to this first proposition, to wit:

(a) Prior to the enactment of this legislation qualified persons, heirs, or qualified assigns could enter lands. This act does not consider any others. It follows that this act applies only to qualified persons, their heirs, or qualified assigns of qualified persons.

(b) Persons who have made locations in good faith in their own interest.

This cuts out alike the impecunious dummy who permits the mere use of his name for a small money consideration and the shrewd promoter or speculator who located with intent to unload upon a stock company or corporation at a fancy price. To stretch the act to include either of these classes is to go beyond its words entirely and give a form of relief to Alaska speculators never intended by Congress.

It follows, to my mind, that the only persons who can invoke this law are such qualified persons as on May 28, 1906, held coal claims properly and lawfully located prior to November 12, 1906.

Second proposition.—This sets forth what the above persons may do under this law. To quote the act, such persons "may consolidate their said claims or locations."

The act does not say that claims heretofore unlawfully consolidated are confirmed, nor does it say that heretofore consolidated claims may proceed to patent.

The act continues "and for this purpose" (for the purpose of consolidating) "such persons, their heirs or assigns" (the qualified holders of coal claims lawfully located prior to November 12, 1906) "may form associations or corporations."

The act says "may form" (not that corporations heretofore formed and having unlawfully taken by purchase or contract unpatented coal claims), which corporations or associations "may perfect entry," etc.

The act then gives the following proviso:

"Provided, That no corporation shall be permitted to consolidate its claims under this act unless seventy-five per centum of its stock shall be held by persons qualified to enter coal lands in Alaska."

The proviso is in no way descriptive of the corporation, but merely declares what stock must be held by qualified persons at date of consolidation. The claims are consolidated at the time of transfer to the corporation; the corporation may be formed "for the purpose" of consolidating these claims.

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Manifestly, no corporation could, prior to passage of this act, be lawfully formed for the purpose of consolidating different Alaska coal claims into one for the purpose of entry and patent.

In view of the foregoing, it is my opinion that the regulations to be issued, so far as they relate to corporations, should cover points indicated in the following tentative paragraph:

"A corporation applying to enter consolidated claims under this act must with its application to enter file a duly certified copy of its articles of incorporation and by-laws, and, the sworn statement of its president and secretary, or other managing officer, showing: (First) that said corporation was organized since May 28, 1908, for the purpose of consolidating and entering the coal claims of its incorporators; (second) that the original locator, his heir, or duly qualified assignee of each coal claim consolidated is an incorporator in said corporation; (third) that at date of such incorporation and date of transfer of said claim to said corporation, the locator, his heir, or duly qualified assignee was the lawful owner of such claim, as shown by the records of the proper local land office, or by proper abstract of title where heirship or lawful assignment is not a matter of land office record; (fourth) that such owner at time of consolidation of each claim consolidated has received and now owns stock in said corporation in amount proportionate to the then value of his claim; (fifth) that for the purpose of consolidating such claims were transferred to said corporation upon the dates as shown in each case in said affidavit, and upon said dates at least 75 per centum of the capital stock of said corporation was owned by persons qualified to enter coal lands in Alaska, as shown by the included schedule of stockholders and holdings.

"There shall also be filed with each corporate, or association, application an affidavit from the original owner, heir, or assignee, showing said claim was located in good faith by said person in his own interest, and not in the interest of, for the benefit of, or at the request of, or as employee or agent of any other person, firm, or corporation, and that the said claim was so held by said locator, heir, or lawful assignee until the date when transferred to said corporation; that said transfer was for the purpose of permitting affiant to consolidate said claim with others under the act of May 28, 1908; that affiant shall also show the capital stock of said corporation, the number of shares by him received for his claim and that he holds said shares uncumbered, and that said shares represent the true value of said claim at date of said transfer; that by means of said ownership in such stock and his rights as stockholder in said corporation said affiant expects in good faith to engage in the business of mining coal and to reap a profit from the mining of coal from said consolidated claims."

(Signed) H. H. SCHWARTZ.

MAY —, 1909.

THE COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: By your letter "P," H. H. S., 38231, of December 28, 1907, you directed me to take up the investigation of the alleged fraudulent entry and acquisition of coal lands within the District of Alaska.

As a result of an examination of the records of the Juneau, Alaska, land office, the filings and entries were classified into groups, under the names of the agents making such filings, my theory being that each group represented a separate conspiracy to violate the law. These groups are as follows:

Brown, Bushnell, Chezum, Christopher, Cunningham, Doughton, Dunn, Foster, Green, Hartline, Hunt, Jester, Kelley, McAlpine, McHenry, Mackey, Morrow, Rathbone, Simmonds, Smith, Stracey, Thurston, Wells, Willoughby, and Young.

In compliance with your telegram of March 10, I submitted reports relative to each group on dates prior to April 1, which reports are of record in your office.

The Cunningham is a characteristic group and reference is here made to my report of March 23, 1909, thereon, submitting evidence which shows that the coal declaratory statements in said group were filed subject to an agreement that upon title being perfected to the individual claims of 160 acres each, the entryman was to deed such claim to a company to be formed for the purpose of developing and marketing the coal and receive stock in said company in payment, Cunningham, the agent in this case, to receive one-eighth of the stock issued to each entryman.

As a result of a conference on May 17, 1909, with the honorable Secretary, yourself, and the Chief of Field Service, the Secretary directed that a letter be prepared for his signature to the Attorney-General, setting forth the general facts and requesting an opinion as to whether or not the filings involved were unlawful in view of the act of May 28, 1908. Pursuant thereto the following letter was prepared and submitted to the department:

[HS]

MAY —, 1909.

ATTORNEY-GENERAL.

SIR: Under date of May 28, 1908, Congress passed an act entitled "An act to encourage development of coal deposits in the Territory of Alaska." At the date of the passage of this act there were pending in the various land offices in Alaska unperfected coal entries in which payment had not been made and cash certificate had not been issued. These entries were made by persons qualified to enter under the general coal-land laws. In a great many cases entrymen had under varying circumstances contemplated making, contracted to make, or had actually made, transfers of the entries, or agreements to transfer these entries to companies or corporations. The general proposition sought to be effected by these transfers was to consolidate the entries into groups in order to secure such acreage as would warrant the mining of coal upon an extensive and permanent basis. Application is now being made from time to time that certain of the entries above referred to, pending on March 28, 1908, be now accepted, cash price received, and entries permitted to go to patent under the terms of this act. This department would be pleased for your official opinion as to whether these entries may be completed and patent issued, in cases wherein the law has been complied with, except for some one of the following irregular or illegal agreements or conditions pending May 28, 1908:

1. A verbal or written agreement between two or more entrymen, made prior to the initiation of the entry, that upon payment for the land, and issuance of a cash certificate, the entries should be transferred to a single company or corporation, and the different entrymen to accept stock in said corporations in payment for the land.

2. A contract conveying said lands to a company or corporation, in which the entryman had or expected to receive stock in payment for the lands.

3. Entries made under an agreement to convey, and conveyance made to a company or corporation, which company or corporation now offers to make cash entry under the act of March 28, 1902, by consolidating the said claims or locations so made.

4. A verbal agreement by two or more entrymen made prior to the initiation of the entry, that upon issuance of patent, the entries would be consolidated and mined at joint expense of each claimant, share and share alike.

Respectfully,

Secretary.

The matter was considered by the department, and on May 19, 1909, you were advised as follows:

MAY 19, 1909.

COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: Referring to your recent request for instructions relative to unperfected coal entries within Alaska, made by qualified persons prior to the passage of the act May 28, 1908 (35 Stat., 424), concerning which you report that under varying conditions arrangements had been entered into looking to the transfer and consolidation of the entries into groups in order to secure such acreage as would warrant the economic development of the groups, and that application is now being made to perfect said entries under said act, I have to advise you that the act of May 28, 1908, was a curative act and should be liberally construed so as to further the object intended to be advanced by said legislation, namely, the consolidation of coal claims in Alaska initiated prior to November 12, 1906, through means of associations or corporations, in order to permit of the acquirement of title to contiguous locations not exceeding 2,560 acres.

There are, of course, conditions respecting the qualifications of the persons constituting the association or corporation making the consolidated entry, its length, etc., with respect to which your inquiry has no relation. It is assumed that the difficulty with which your office is confronted in passing upon these applications is merely a technical objection might have been raised as to the good faith of the claimant entryman because of the understanding, arrangement, or agreement contemplated entered into with respect to the completion of such entries prior to the passage of the act of May 28, 1908. With respect thereto I am of opinion that to so limit the scope and purpose of the act of 1908 as to refuse the privilege of perfecting such claims under its liberal provisions, solely because of such previous arrangement or agreement, unwarranted, and that in passing upon entries sought to be perfected under the act of 1908, where the only objection thereto is an arrangement or agreement of the character specifically described in your letter, the same might and should be accepted and passed to patent.

Very respectfully,

(Signed)

FRANK PIERCE,
First Assistant Secretary.

I am now in receipt of your letter of May 24, 1909, furnishing me copies of the two letters hereinabove quoted and directing reports in view of said opinion.

I have the honor to report that my separate reports on the groups of filings hereinbefore named set forth the general facts indicating the circumstances and conditions under which such filings were made, and any further investigation would result only in an accumulation of evidence along the same lines and in support thereof.

As before stated the Cunningham group may be taken as characteristic, and my report thereon sets forth fully the facts in connection therewith. A state of facts covering the Cunningham case having been contained in the letter hereinabove quoted submitted to the department, its opinion renders futile any further investigation of that and the similar groups hereinbefore mentioned. I will therefore make no further investigation of these filings unless instructed by you.

There are several other smaller groups and a few individual entries concerning which the facts are or may develop to be different from those herein reported on, in which cases further investigation will be made and reports submitted.

There are 782 coal filings involved in the several groups, and the original papers heretofore furnished me are transmitted herewith.

Respectfully,

Chief of Field Division.

TAFT IN LAND ROW—DEMANDS DEPARTMENT STATEMENT ON GLAVIS CHARGES—OFFICIALS MUCH EXCITED—ARE STIRRED TO ACTION BY PEREMPTORY ORDER FROM SEVERELY—REVELATIONS BY THE POST CAUSE FIGHT IN THE INTERIOR DEPARTMENT TO BE BROUGHT TO SHARP CLIMAX—PIERCE DECISION ON ALASKA COAL CASES NOT IN ACCORD WITH HIS PREVIOUS INTERVIEW—DETAILS OF WICKERSHAM'S REVERSAL.

The revelations made exclusively in the Post yesterday morning of the real nature of the charges presented to President Taft by Louis R. Glavis, of Seattle, chief of Field Division, General Land Office, against high officials of the Department of the Interior was the one absorbing topic yesterday in official circles. The sharp challenge of veracity between the Acting Secretary of the Interior and Associate Forester Price, of the Forest Service, brought the long and bitter struggle between the two departments to a warm climax.

Although garbed in strictly parliamentary and departmental habiliments, the short and ugly monosyllable, which, in the good old days, guided the way to coffee and pistols for two in the Bladensburg dale, has injected itself into a situation which, in many particulars, is unprecedented in the history of the administration of the Federal Government.

There was great excitement in the Interior Department yesterday upon receipt of directions from the President to prepare a statement immediately upon the Glavis charges.

In view of the grave charges made by Mr. Glavis, the decision rendered by Acting Secretary Pierce on May 19, which, upon the irregular appeal of Mr. Glavis, was reversed by Attorney-General Wickersham, has a significant interest, coming as it did at a critical period in the investigation of the Alaska coal-lands frauds. On Tuesday Mr. Pierce told a Post reporter that this decision had nothing to do with the Cunningham cases. Yesterday the request of a Post reporter for a copy of this decision was met with a sharp refusal from Mr. Pierce, who said he had decided not to give it out.

MR. PIERCE'S DECISION.

However, the Post is enabled to print the document verbatim, as follows, even to the official initialing upon it:

K. M. T.

F. W. C.
E. C. F.

DEPARTMENT OF THE INTERIOR,
Washington, May 19, 1909

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: Referring to your recent request for instructions relative to unperfected coal-land entries within Alaska, made by qualified person prior to the passage of the act of May 28, 1908 (35 Stat., 424), concerning which you report that under varying conditions arrangements had been entered into looking to the transfer and consolidation of the entries into groups, in order to secure such acreage as would warrant the economic development of the groups, and that application is now being made to per-

the said entries under said act, I have to advise you that the act of May 28, 1908, was a curative act and should be liberally construed so as to further the object intended to be advanced by said legislation, namely, the consolidation of coal claims in Alaska, created prior to November 12, 1906, through means of associations or corporations, as to permit of the acquirement of title to contiguous locations, not exceeding 2,560 acres.

DIFFICULTY MERELY TECHNICAL.

There are, of course, conditions respecting the qualifications of the persons constituting the association or corporation making the consolidated entry, its length, etc., with respect to which your inquiry has no relation. It is assumed that the difficulty with which your office is confronted in passing upon these applications is merely a technical objection might have been raised as to the good faith of the claimant entryman, because of the understanding, arrangement, or agreement contemplated entered into with respect to the completion of such entries prior to the passage of the act of May 28, 1908. With respect thereto, I am of opinion that to so limit the scope and purpose of the act of 1908 as to refuse the privilege of perfecting such claims under its liberal provisions, solely because of such previous arrangement or agreement, is unwarranted, and that in passing upon entries sought to be perfected under the act of 1908, where the only objection thereto is an arrangement or agreement of that character specifically described in your letter, the same might and should be accepted and passed to patent.

Very respectfully,

FRANK PIERCE,
First Assistant Secretary.

INITIALS OF ATTORNEYS.

The initials in the left-hand corner are those of the stenographer. In the other corner the initials "F. W. C." stand for F. W. Clements, first assistant attorney of the Interior Department, and the initials "E. C. F." are those of E. C. Finney, assistant attorney of the Secretary of the Interior, Mr. Ballinger.

Mr. Pierce's opinion refers in its opening to recent requests for instructions, of which, as a matter of fact, there is no record. But it is a matter of record that at the time this opinion was rendered practically the only group of coal-land claims ready to pass to patent were those included in the Cunningham group, which, had his decision not been reversed by the Attorney-General upon appeal by Glavis, would have been clear listed and patented, under the ruling which Mr. Pierce said in his interview had nothing to do with the Cunningham claims. It will be noticed that in his decision Mr. Pierce says that the law should be liberally construed as to the consolidation of coal claims by corporations, and that challenging the good faith of the claimants because of agreement or understanding (which Mr. Glavis charges was conspiracy to defraud the United States) is unwarranted.

In other words, Mr. Pierce holds that charges of conspiracy in such cases would not stand. Thus the only thing apparently which stopped the clear listing and passing to immediate patent of the Cunningham group of claims was the decision of Attorney-General Wickersham.

At first the Department of the Interior refused to present to the Attorney-General the question of legality of this decision, forcing the "insubordinate" Glavis to take his action upon his own initiative.

FEATURES OF OPINION.

Some of the most significant features of Attorney-General Wickersham's opinion are as follows:

"You request my opinion whether entries may be completed and patents issued under said act of May 28, 1908, upon locations made prior to November 12, 1906, in cases where some of the following irregular or illegal agreements or conditions existed May 28, 1908.

"1. A verbal or written agreement between two or more entrymen made prior to the initiation of the entry, that upon payment for the land an issuance of a cash certificate, the entries should be transferred to a single company or corporation, and the different entrymen to accept stock in said corporations in payment for the land.

"2. A contract conveying said lands to a company or corporation, in which the entrymen had or expected to receive stock in payment for the lands.

"3. Entries made under an agreement to convey, and conveyance made to a company or corporation, which company or corporation now offers to make cash entry under the act of May 28, 1908, by consolidating said claims or locations so made.

"4. A verbal agreement by two or more entrymen made prior to the initiation of the entry, that upon issuance of patent the entries would be consolidated and made at the joint expense of each claimant, share and share alike.

CONSUMMATION OF AGREEMENTS.

"The consummation of any of the agreements or contracts mentioned in the last three of the above-quoted paragraphs would have vested in one association or corporation the title to the lands embraced in several entries, a clear violation of section 2350, Revised Statutes, which provides that 'the three preceding sections shall be held to authorize only one entry by the same person or association of persons.' (U. S. v. Keitel, 211 U. S., 370, 387-391; U. S. v. Trinidad Coal Co., 137 U. S., 160.)

"The agreement described in the fourth paragraph is identical with the one involved in the case of the United States v. the Portland Coal and Coke Company, decided by the United States circuit court for the western district of Washington, October 5, 1908.

"I am of the opinion that, if the agreements or arrangements mentioned in the letter were entered into by locators of coal lands in Alaska after they had made the locations in good faith and in their own interest alone, such locations may, under the provisions of the act of May 28, 1908, lawfully pass to entry and patent in accordance with the terms of said act. On the other hand, I am of the opinion that if such agreements or arrangements were entered into prior to such locations being made, such locations do not come within the provisions of said act, and can not be lawfully passed to entry and patent."

A MATTER OF RECORD.

After Mr. Glavis had presented his appeal from the decision of Acting Secretary Pierce, and had obtained a reversal, the question was presented in regular form to the Department of Justice by the Interior Department and the reversal was made a matter of record.

The investigation of the charges of fraud and conspiracy in the Cunningham case was begun when Mr. Ballinger was Commissioner of the General Land Office and received his personal attention. Immediately upon resigning from the Land Office he became attorney for this and several other groups of Alaska claims.

The Interior Department officials shut up like clams yesterday upon the arrival of a message from President Taft asking that a complete statement of the Cunningham case be forwarded to Beverly at once. They were disposed to feel much incensed over the reports regarding their administration, but inasmuch as they were under orders to make a report to Beverly, they announced that they could not discuss the charges of Glavis.

Commissioner Dennett declared that his lips were sealed, although he had returned only the evening before from the West, where he had been looking into the gathering of evidence in the Cunningham cases. Acting Secretary Pierce likewise said that he could not speak of the matter.

OFFICE FEVERISHLY ACTIVE.

In the General Land Office all was feverish activity in the quarters of Chief Friswell and Agent Schwartz. He denied himself to callers all day, including press representatives, the word sent out to them being that he was "too busy."

Mr. Schwartz had several clerks working with him, apparently under high pressure, and it is to be presumed that the accounting President Taft had demanded was being prepared.

A conference of the several department officials, with Assistant Attorney-General Lawler present, was held early in the day as soon as the request from the President had been received. It was announced that the statement for Beverly would be prepared without delay. Privately, the officials expressed great indignation over the charges and they declared that at the proper time they would have no difficulty in convincing the public of their probity in dealing with the Cunningham cases.

Mr. Pierce, as Acting Secretary of the Interior, yesterday designated 50,450 acres more land as coming within the enlarged homestead act in the State of Montana, making the total, up to date, 26,080,530 acres so designated in that State.

Mr. BRANDEIS. In connection with the statement in the Attorney-General's summary, Senate Document 760, referred to in Mr. Glavis' testimony, pages 145-146, and also referred to on pages 835-837

concerning the criminal prosecutions of coal claimants, I now introduce the following letter of Glavis to the commissioner, dated June 1908.

PORTLAND, OREG., June 10, 1908.

HONORABLE COMMISSIONER GENERAL LAND OFFICE, :

Washington, D. C.

SIR: By letter "P" 38231-HHS, dated December 28, 1907, I was directed, among other things, to make an investigation regarding the method of making coal-land entries in Alaska by an investigation of each individual coal entryman; this investigation involved several different "groups" of entries, which, for convenience, are referred to in different reports, made from time to time, by the name of the party acted as attorney or agent in the locating of the "group" of claims. Among the "groups" was that of C. H. Doughten's entries. Doughten secured powers of attorney from various residents of Spokane, Wash., and other places, wherein was given power to locate a coal claim for the grantor of such power and in the name of the said grantor to bargain and sell the said coal claim to such person, etc., as he might see fit. At the time Doughten secured the said powers of attorney he had the persons giving the same that he was going to sell their assignments, or rights, in these claims and would give each of them one-third of the proceeds of the sale, which would amount to about three hundred and thirty (\$330.00) dollars.

In pursuance of the powers above mentioned the said Doughten located some sixty or seventy persons on coal lands in Alaska. These persons, in the most of the cases, agreed to the extent of about twenty-five dollars, in the development and exploitation of their claims; in some instances, however, Doughten got as high as sixty dollars as a locator. They have, in the majority of instances, executed assignments of their land rights and received their third of the proceeds of sale. It is said that M. A. Allen, who acted as agent for a large number of coal entries located by Seattle, Portland and Alaska parties, put up the money, or secured the loan of the same, for the purpose of buying these assignments.

The original papers in the files of the U. S. land office at Juneau, Alaska, the larger part of which, relative to the particular cases referred to herein, have been forwarded to this office, show that each of the parties located by Doughten gave a power of attorney for the location of their respective claims, but these powers of attorney do not contain any provision for the sale of the lands located. The agreement for the sale of the said claims must have been a verbal one, or, it is possible, a separate power of attorney was given, and retained by Doughten, by the parties for the sale of the claim located. There is nothing in these original papers that could be made the basis for a charge under section 4746, R. S. U. S., as amended, and the individual entryman does not appear, at any point in the filing of his entry or claim, to have sworn to any statement in his application papers. The only papers that are filed in support of the application for the land are: Power of attorney, notice of location, affidavit of entryman, in person, and affidavit of attorney. The main point in the affidavit of entryman is: "That I came into possession of said tract on the 20th day of June, 1904, and have since remained in actual possession continuously; that I have succeeded to be located and opened a valuable mine of coal thereon; that I am not personally acquainted with the character of said described land, but that I have held possession of the same through my duly authorized agent." The power of attorney, relative to the particular claim above referred to, being the claim of one Wm. F. Boettner, was given on November 16th, 1905. Therefore the statement that he has held possession of the said tract through his duly authorized agent since June 20th, 1904, cannot be true.

Furthermore, these parties were, in the most cases, poor people, who could not afford the money with which to pay for the exploitation and development of the coal mine and then paid the government price of ten dollars per acre for the land to have sold them. They admit, on examination, that they had no intention of completing purchase of the lands filed upon by them, and that such a phase of the proposition was never presented to them by Doughten. That the only proposition Doughten made was that they were to get a certain amount of money for the use of their rights. It would appear that an action against Doughten and the agents working with him in the proposition would come under section 5440 for conspiracy to defraud the government.

Attached hereto, and forming part of this report, is an abstract of the statements made in relation to this Doughten group of entries.

The case was presented, partially, by Special Agent H. T. Jones to the U. S. attorney at Spokane, Washington, in April, 1908. The U. S. attorney stated that in his opinion that the Government had a case against these parties, but because of the date on which the offense was committed it was likely that a special grand jury

would have to be called to consider the same. The State of Washington having been divided into two districts, the eastern and western, all offenses occurring prior to August, 1905, will have to be tried by special grand jury called from all parts of the State. As the U. S. attorney at Seattle, Washington, before whom the case of Christopher et al. was submitted, requested that the matter be first taken up with your office and then submitted to the Department of Justice, the same procedure would probably be desirable with relation to the Doughten case.

I therefore respectfully recommend that the papers and reports in this case be submitted to the Department of Justice with a view to the prosecution of Raymond Brown, Charles H. Doughten, George Mudgett, and possibly J. E. Griffith.

Very respectfully,

Chief, First Field Division.

Mr. BRANDEIS. In connection with the testimony of Andrew Kennedy, concerning instructions received by him from Glavis for his investigation in Alaska, I introduce the letter of Glavis to Kennedy of July 16, 1909:

SEATTLE, WASH., July 16, 1909.

Mr. ANDREW KENNEDY,
Special Agent, G. L. O., Seattle, Wash.

SIR: In addition to the verbal instructions heretofore given you in reference to the investigation that is desired made by yourself and Mr. Stoner during your present visit to Alaska, I have to request that you make field examination of the following groups of cases:

"X" special.

Barrett group, 5 claims.

Bushnell group, X, 23 claims.

Chesem group, X, 12 claims.

Christopher group, X, 35 claims.

Cunningham group, X, 33 claims. (See if scrip is put on coal filing.)

Doughten group, X, 39 claims.

Feed group, 8 claims.

Green group, X, 73 claims.

Hartline group, 16 claims.

Hunt group, XX, 12 claims.

Jeder group, 10 claims.

McAlpine group, X, 86 claims. (McAlpine, Bushnell & Mackey all one.)

McHenry group, 8 claims.

Mackey group, X, 66 claims.

Morrow group, X, 4 claims.

Rathbone group, X, 5 claims.

Simons group, X, 34 claims.

Smith group, 20 claims.

Stracey group, X, 78 claims. (English Co. 2 entries for same land; 38 filed twice.)

Thurston group.

Wells group, 12 claims.

Willoughby group, X, 28 claims.

Young group, X, 20 claims.

The desire of this investigation is to enable the Government to inform the Land Department as to whether or not the improvements have been made with a view to the consolidation of the claims. Incidentally it is desired that you will make such investigation as necessary to properly inform the office as to whether the present area of 2,560 acres is sufficiently large as to permit the practical mining of coal and the approximate number of years that coal might be mined from such an area.

It is also desired that you and Mr. Stoner secure affidavits of all Alaska coal claimants whom you may be able to locate in the vicinity of the claims, and that you also secure affidavits of any persons who may have knowledge that might be material to the government cases.

Since the commissioner is particularly anxious to have an immediate trial of the Charles Cunningham group of coal cases, you are requested to thoroughly investigate said case in order that, upon your return, immediate action may be taken with a view to setting the case for hearing. In this group I would suggest that you secure as many affidavits as possible that will in any way show or indicate that the claims are being worked with a view to the consolidation thereof.

Respectfully,

Chief of Field Division.

LRG/ES.

Mr. BRANTLEY. In connection with Ballinger's relation to various coal claimants, letter of Commissioner Ballinger to Rogers November 20, 1907:

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C.

3VF.

Copies of correspondence
to Mr. Kirkland: per
D. P. Kirkland

MR. R. A. BALLINGRUE,
Seattle, Wash.
MY DEAR MR. BALLINGRUE: Assuming that you have received the paper
should be much pleased to have your professional opinion of the validity
sent in one certain com- had claim containing the "Document" and as con-
Mountain, Alaska, the same being known as the "Document" and as con-
tory statement No. 90, located by H. A. Green, late U. S. Geologist, Al-
This Mr. Green, I am informed, is a resident of Seattle and well known.

circles. I have a contract with one Harry White, of Los Angeles, Calif., and I believe Mr. White also has an office in Seattle, for the purchase of this claim, but he has not yet furnished me with an abstract of title, which his contract requires him to do. Some time ago he wrote me that Mr. Green was then in Alaska and would return a few weeks later and bring with him all papers or copies thereof tending to show the status of the title. If you will be kind enough to look into the matter and give me your professional advice, I should be pleased if you would communicate with Mr. Green if he shall have returned from Alaska and ask him for an inspection of the papers he may have; also any additional information he may have pertaining to the title to this claim. I shall also esteem it a personal favor to have you express your views as to such an investment as a business proposition and say to me what you consider the market value of such a coal claim, and any information you may give me in this respect will be regarded as strictly confidential. Shall remit the price of your services when advised of your charge.

Awaiting your convenience, I remain, very truly, yours,

M. P. KINKAID.

SEPTEMBER 9, 1906

Hon. M. P. KINKAID, *O' Neill, Nebr.*

DEAR SIR: Your letter of the 5th instant addressed to Mr. Ballinger has been received and opened by us in his absence. He is now in the East, to be gone about a month. We have forwarded your letter to him.

Respectfully,

BALLINGER, RONALD, BATTLE & TENNANT,

By _____.

OCTOBER 9, 1906.

Hon. M. P. KINKAID, *O' Neill, Nebr.*

MY DEAR MR. KINKAID: On my return from the East I found your letter of September 5, in reference to the Hammond coal entry in Alaska. I have just made inquiry regarding the whereabouts of Mr. M. A. Green, and find that he is in Alaska and will not return to Seattle before about the 5th of November. On Mr. Green's return, I will undertake to investigate the title of this claim and advise you further. My general opinion is that, in regard to these coal entries in Alaska, the department will insist upon patents being taken out under the act passed at the last session of the legislature, permitting the consolidation of claims to the amount of four sections with limitations affecting the disposition thereof. However, I will advise you further, as above stated.

Mr. Harry White was in Seattle for several weeks, but I had no opportunity to take this matter up with him. He is now in California.

Yours, very truly,

O'NEILL, NEBR., November 4, 1906.

Hon. R. A. BALLINGER,

Rooms 901-6 Alaska Bldg., Seattle, Wash.

MY DEAR JUDGE: Your esteemed favor of the 9th ult. was duly received, and I delayed making acknowledgment awaiting the receipt of further communications from Mr. Harry White, from Los Angeles, concerning furnishing me an abstract of title on the coal claim in question. Recently I heard from Mr. White, and besides have received a letter from U. S. Commissioner G. C. Britton, of Katalla, in which he incloses papers which he calls an abstract of title to the coal claim, which papers I inclose herewith, consisting of a statement certified to by U. S. Deputy Surveyor D. B. Skinner and another paper headed abstract of title to Hammond Coal Claim, certified to by Commissioner Britton. Your professional opinion, based upon these papers, as to whether a good title to the claim can be transferred to me by Hammond, and as Mr. White is a copy of whose letter I inclose, states that the matter must be closed by the 10th inst. I shall esteem it a personal favor if you will examine the papers and advise me of the result of your opinion by a brief telegram at your very earliest convenience. If your judgment shall be that the title is good, I shall consummate the purchase without delay in the manner indicated in Mr. White's letter, and shall choose to take stock rather than the deed now in the First National Bank at Omaha. It is just possible

that I may be absent about the time when you would wire me, in which event I shall provide before leaving for taking care of your telegram if I shall not have previously placed in the Scandinavian American Bank at Seattle \$1,900, the balance of the purchase price to be paid over on receipt of the stock.

Thanking you for giving this matter your early attention and awaiting your advice as to the title—and I may add I shall appreciate any further advice that may be at all pertinent as to the venture, as well as your professional opinion as to the title—I remain,

Very truly, yours,

M. P. KINKAID.

[Telegram.]

VALENTINE, NEBR., November 7.8.

Judge R. A. BALLINGER,
Alaska Bldg., Seattle, Wn.

Am placing eighteen hundred in Scandinavian Bank, Seattle, to be paid for Hammond claim, provided you find title & transaction all right to take stock instead of title.

M. P. KINKAID.

NOVEMBER 10, 1908.

Hon. M. P. KINKAID,
O'Neill, Nebraska.

MY DEAR MR. KINKAID: I received your wire of the 7th inst., also your letter of the 4th inst., in the matter of the Hammond coal claim in Alaska, also enclosures as follows: Abstract and letter of G. C. Britton, commissioner; copy of letter of Harry White; and statement of the United States deputy surveyor; all of which I herewith re-enclose to you. The abstract shows proper location of the claim. The statement as to survey, of course, is of no effect unless the survey be filed and approved.

Mr. White called upon me, and I took up the matter of the corporation which had been undertaken to be organized, known as the Seattle-Alaska Anthracite Coal Co. After a careful examination of the records of this proposed company, I found that it was so imperfectly organized that I could not recommend your taking stock in it until necessary amendments are made to give it a legal status. I have therefore concluded that the only proper course for you to take is to accept the deed at O'Neill under a guarantee from Mr. White and Mr. Green, which they have executed and which I herewith enclose. It is understood, as you will see from the memorandum enclosed, that you have the option until December 15th to turn the claim in for stock on a pro rata basis with the remaining claims necessary to make the required area as covered by the act of Congress referred to in said memorandum, to wit, 2,560 acres. As soon as this stock is in shape to be delivered to you, I will advise you, so that you can make quitclaim direct to the company and receive your proportion of the stock. I consider that it will be necessary for you to exercise your option in order to secure patent to this claim within any reasonable time. Mr. White and Mr. Green have promised to see that the survey is properly filed and approved and other matters done necessary to protect your purchase of this claim. I trust you will approve my action in regard to this matter. It would have been a much cleaner disposition of the purchase if the stock could have been issued direct to you instead of taking title and subsequently making transfer to the company.

With best regards, I remain, yours, very truly,

[Telegram.]

ONEILL, NEB., 15 Nov., 1908.

Hon. R. A. BALLINGER,
Rooms 901, 906, Alaska Bldg., Seattle:

Letter received. Do not want title to claim conveyed to me in any event. Wish stock instead. Shall write.

M. P. KINKAID

[M. P. Kinkaid, Sixth District, Nebraska.]

O'NEILL, NEBR., November 17, 1908.

Hon. R. A. BALLINGER,
Alaska Building, Seattle, Washington.

MY DEAR JUDGE: I have received your esteemed favor of 10th inst., and immediately after reading it wired you in substance that I did not wish title to the claim in question in any event and that I would write you. Thanking you for your vigilance and judgment exercised, also for your further consideration which I am about to ask of you, I am pleased to say I approve of your refusal to accept certificates of stock of the unperfected or imperfect corporation, but as to one feature I should like to have the matter rearranged, and I feel confident you will be able to get that done; in fact, I think Mr. White will not hesitate about it for a moment. As I wired you, I do not want title to the claim in any event. I wish stock of a perfected corporation, when you shall so find it, for my money instead of accepting title to the claim and conveying that to the company in consideration of stock to be issued to me. This was my express agreement made through Wallace, acting for Mr. White and the contemplated corporation, by a letter he sent to me and my reply thereto made by telegram at the very instant that I wired you from Valentine, this State. Besides the objection your letter points out to my taking stock at this time, Mr. White advises that at the start the stock should or had better be, for my protection, issued to Hammond and let him hold it for me in his name during the short time required for the company to put itself beyond a stockholder's legal liability, which will be but a short time, for which liability I would not be morally responsible on our contract, yet legally responsible with the stock in my name. This latter precaution I deem also desirable. I should therefore be pleased to have it arranged that I have stock issued in the manner suggested by Mr. White so soon as the company shall have become legally qualified to issue it, in your judgment, and I desire the guarantees given by Messrs. White and Green to hold good at the same time, or, if not in proper form for this kind of an arrangement, a new one to be given. I enclose herewith carbon copy of letter written to Mr. White and desire what I have written to both of you to be considered together. Of course I shall be pleased to compensate you for your professional services when the transaction shall have been consummated.

Thanking you for the pains you have been taking and awaiting your convenience and further advice, I remain,

Sincerely, yours,

M. P. KINKAID.

O'NEILL, NEBR., November 17, 1908.

HARRY WHITE, Esq.,
c/o Hotel Butler, Seattle, Washington.

MY DEAR SIR: Thanks first for congratulations you extend upon my reelection, which I appreciate. I enjoy the victory, the greatest of any I have yet won by a congressional race, having been so earnestly and bitterly opposed by the opposition. My majority is about 2,500, which is pretty good when the other fellow thinks he is elected, as my opponent did think for a day or two.

But to business. I have noted by your letter, also by letter from Judge Ballinger, the arrangement you made concerning our business matter. I should be pleased to say that what you did was entirely satisfactory to me, but it is not in one respect though I feel confident you will not hesitate to remedy that, which it would seem could be easily done. It was all right for Judge Ballinger to decline to accept the stock for the reasons which you and he point out, but the stock is what I want when I can have it legally issued by a perfected incorporation of the company and be protected besides against a stockholder's financial liability, for which morally I would not be responsible. I do not want the title on the claim conveyed to me at all, and you can readily arrange it to have it conveyed direct to the corporation and allow me to buy stock instead of the claim pursuant to my express acceptance of the proposition made to me by your agent, Wallace, and in the carrying out of which I remitted the \$1,800 to the Scandinavian & American Bank. The money was remitted at the very same time that I wired Mr. Wallace my acceptance of his proposition to take stock and I wired Judge Ballinger at the same time, asking him to give the matter his professional attention. I am sure the Judge did not know of my decided preference to take stock rather than title to the claim, and it is possible that you were not fully acquainted with the contents of the letter written me by Wallace and my telegram in reply thereto. Under the circumstances I wired the First National Bank of Omaha to not send me the deed, but to return it to Seattle, for I did not want to have it appear for an instant

that I was accepting the title to the claim. Now what I desire is that I receive stock or my money, which you can arrange in the manner you suggest for the purpose of protecting me against the stockholder liability temporarily, and for which I would not be morally responsible; after that little crisis is over new certificates could be issued to me direct. You can readily cause the title to the claim to be conveyed direct to the corporation. I feel confident such an arrangement will be satisfactory to you, but if you would rather return my money than to carry it out in this way, you will be at liberty to do so. I shall write Judge Ballinger, enclosing him a copy of this letter to you.

Awaiting your further communications, I remain,

Sincerely, yours,

Whereas M. P. Kinkaid, of O'Neill, State of Nebraska, heretofore entered into an agreement with I. B. Hammond, of Portland, Oregon, through his agent, Harry White, to purchase from said Hammond that certain coal claim in the District of Alaska, known as the Hammond coal claim, said coal claim being represented by location certificate filed October 20, 1905, and recorded in volume 5 of Mining Locations at page 461 of Kyak recording district, District of Alaska; said notice of location being numbered 2922 and made pursuant to the provisions of an act of Congress approved April 28, 1904, entitled "An act to amend an act entitled 'An act to extend the coal land laws to the District of Alaska,'" said claim being more particularly described substantially as follows:

Beginning at a post marked "No. 1," in the northwest corner where this notice is posted; thence running 2,640 feet in a south direction to a post marked "No. 2," southwest corner; thence 2,640 feet in an east direction to a post marked "No. 3," southeast corner; thence 2,640 feet in a north direction to a post marked "No. 4," northeast corner; thence 2,640 feet in a west direction to the place of beginning. The initial corner, No. 1, Butte monument, bears south 38 deg. 51' 35" west 21 deg. 18 feet distant. Butte monument is 3½ feet base, 3 feet high, built on first peak north of timber line, about 3,000 feet south of the summit of Carbon Mountain on Carbon Ridge, between Carbon Creek and head waters of Glacier Lake; and

Whereas said Kinkaid has heretofore paid the sum of \$1,000 to the said Hammond as part purchase of said claim and has also this day paid the additional sum of \$1,800, the balance of said purchase price; and

Whereas the survey of said claim has not yet been approved by the proper authorities and entry thereof has not been made and the bona fides of said location and the rights of said Hammond have not been established therein; and

Whereas the undersigned, Harry White and M. A. Green, are willing to guarantee to the said Kinkaid that said location of said claim and the survey thereof as heretofore made by D. B. Skinner, civil engineer and United States deputy land and mineral surveyor, is according to the rules and regulations of the Department of the Interior and will be duly approved by the Department of the Interior, and that the said entryman and his agents have in all things complied with the laws of the United States and their acts are bona fide and free from any question brought by the Government and are willing to further guarantee that patent will issue in due time on said claim in compliance with the laws of Congress:

Now, therefore, it is agreed by the undersigned, in consideration of \$1.00 and other good and sufficient considerations, that they and each of them, severally, not jointly, hereby guarantee to protect and hold harmless the said M. P. Kinkaid in the purchase of said claim, and guarantee and agree that the same has been duly and regularly located as provided by the laws of Congress, and that the survey thereof as aforesaid has been duly and regularly made and will be in due time approved by the Department of the Interior, and that the said entry and all parties acting in and for the same have acted within the laws of the United States and in good faith, and that patent shall issue thereon to the said Kinkaid without interruption or contest by any individual or by the Government.

It is understood, however, that the said Kinkaid has the option on or before the 15th day of December, 1908, of transferring said claim to a corporation now existing or to be created for the purpose of consolidating sixteen claims in the vicinity thereof, as provided by the act of Congress entitled "An act to encourage the development of coal deposits in the Territory of Alaska," approved May 28, 1908, and receiving therefor one-sixteenth of the stock of said company upon paying his pro rata of the additional expenses incurred by said company in its organization and consolidation of said claims, or such proportion of the stock, less his proportion of said expenses, at his option, and in such event said company or corporation shall perfect said title and acquire the patent therefor from the Government, and upon due compliance with

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the provisions of this guarantee said undersigned shall be released herefrom. It is further understood that said corporation shall be incorporated under the laws of the State of Washington, with a capital stock equal to the approximate value of said claims and shall be paid in full by the surrender of said claims and transfer thereof to said company.

In witness whereof the said Harry White and M. A. Green have hereunto set their hands and seals this 10th day of November, 1908.

HARRY WHITE.
M. A. GREEN.

Executed in the presence of—
R. A. BALLINGER.
R. W. HUNTOON.

NOVEMBER 20, 1908

HON. M. P. KINKAID, *O'Neill, Nebraska.*

MY DEAR MR. KINKAID: I have been awaiting the receipt of your letter which you referred to in your wire of the 15th inst., but have not yet received the same and feel that I should write you, nevertheless.

As I explained to you in my former letter, I could not see my way clear to accept stock, and did not understand from your instructions that you were unwilling to accept title in your name; therefore advised accepting title until the corporation could be put in shape to give you nonassessable stock. I perhaps should have explained more fully in my former letter why I could not advise your taking stock from the Seattle Alaska Anthracite Coal Co. The reasons are more particularly as follows:

The company is incorporated for \$2,500,000, with the idea of turning in sixteen claims to pay the stock in full. These claims cannot ordinarily be valued at more than \$10,000 each and free more than that much stock from assessment to the par value thereof. The result would be that your proportion of the stock would be in the neighborhood of \$150,000 worth, with only about \$10,000 of it paid in full, and in case of insolvency of the company you would be liable for the additional assessments. Furthermore, the company was incorporated as a mining corporation pursuant to the laws of the State of Washington, which do not permit of such corporations exercising the rights assumed, except over "mineral lands" in the State of Washington. Furthermore, coal lands are not the character of mineral lands contemplated by this act. I have advised the secretary of this company of these defects, after looking over the record, and they are considering the advisability of amending their articles of incorporation to decrease the capital stock and otherwise carry out the provisions of the law enabling them to issue fully paid stock for the coal claims acquired by the corporation.

I showed your telegram of the 15th to Mr. Harry White, and he left with me as further security to you a deed from I. B. Hammond, dated October 10th, this year, duly executed, conveying this particular claim to the Seattle Alaska Anthracite Coal Co., to be delivered to the company when a satisfactory issue of stock can be given you in lieu thereof. Please advise me fully what your pleasure is in the premises. It is possible this claim could be turned in for \$25,000 capital stock as fully paid up, but I cannot believe it would stand a higher appraisalment.

Yours, very truly,

O'NEILL, NEBR., November 24, 1908

HON. A. R. BALLINGER,
Rooms 901-6 Alaska Building, Seattle, Washington.

MY DEAR JUDGE: I have just noted the contents of your esteemed favor of 20th inst., and I am very much pleased with the vigilance you have exercised for the protection of my interests in the matter in question. The stockholders' liability which you describe would be too great a risk to assume with such a high valuation of the stock, i. e., with such an over-valuation, and I would not be willing to assume any such responsibility. I am confident you have the matter very well in hand, and I am going to rely fully on your judgment in the premises, yet do not wish title to the claim.

Awaiting your further advice in the premises, I remain,
Very truly, yours,

M. P. KINKAID.

N. B.—Please address me further at Washington.

NOVEMBER 28, 1908.

HON. M. P. KINKAID,
House of Representatives, Washington, D. C.

MY DEAR MR. KINKAID: Yours of the 24th inst. just at hand. I am now preparing for the Seattle-Alaska Anthracite Coal Co., at the instance of its officers, amendatory articles of incorporation decreasing the capital stock from \$2,500,000 to \$600,000—\$500,000 of common stock and \$100,000 of preferred stock. Am also modifying the powers of the corporation to bring it into harmony with the act of Congress approved May 28, 1908, entitled "An act to encourage the development of the coal deposits in the Territory of Alaska," and also the Hepburn Act. They have their annual meeting on December 7. The matter was not taken up early enough to get publication of the statutory notice for the annual meeting, but the officers are undertaking to get unanimous consent of stockholders to carry through the decrease of capital stock. On this basis of capitalization I think you would be safe in taking your pro rata of stock. I will advise you later, when it is ready to be issued, and will ask that you give me full instructions as to how you want it issued.

Adverting to policies, it seems to me the Republican party have, with the recent successful election, in view of the temper of the people and our platform, assumed great national responsibilities, and one is, to my mind, a revision of the tariff that can not be said to be a revision in favor of monopolistic interests or tending to create or promote monopolies. I know you will be found on the right side of all these questions, and I congratulate you, even though late, on your reelection.

Mrs. E. E. Walker, who has been taking this dictation for me, just informs me that she knew you, as she was formerly a resident of your home town. She also desires to be remembered to you.

Yours, very sincerely,

HOUSE OF REPRESENTATIVES, *December 4, 1908.*

HON. R. A. BALLINGER,
Rooms 901-6, Alaska Bldg., Seattle, Wash.

MY DEAR JUDGE: I am to-day in receipt of your esteemed favor of the 28th ult. and have noted what you have been doing relative to the coal proposition. It strikes me it is a very fortunate circumstance for those interested in the company in contemplation that you took my case up with them, which has resulted in your taking charge of the formation of the company in a professional way. Had they gone on without such capable professional assistance the formation of the company must have been a failure and might have resulted disastrously from a financial standpoint, to say the least of it.

It is noted that you will advise me when the stock is ready to be issued and ask me for instructions as to how I desire it to be issued. While I have no objections to hearing from you as to an alternative proposition as to how the stock shall be issued, I deem it likely I shall very much prefer to have you exercise your own judgment about it, as you will be so much better informed in the premises than I.

Pleased to note Mrs. Walker is in your service, both on your account and her own, because she is a very good stenographer. She occasionally did some work for me when in Nebraska, and it was always satisfactory. Please express my compliments to her.

Noting the views you express relative to tariff legislation, will say I think I concur with you fully.

Awaiting your further advice, I remain, very truly, yours,

M. P. KINKAID,
Sixth District, Nebraska.

Whereas M. P. Kinkaid, of O'Neill, State of Nebraska, heretofore entered into an agreement with I. B. Hammond, of Portland, Oregon, through his agent, Harry White, to purchase from said Hammond that certain coal claim in the District of Alaska, known as the Hammond coal claim, said coal claim being represented by location certificate filed October 20, 1905, and recorded in volume 5 of mining locations at page 461 of Kyak recording district, District of Alaska; said notice of location being numbered 2922 and made pursuant to the provisions of an act of Congress approved April 28, 1904, entitled "An act to amend an act entitled 'An act to extend the coal-land laws to the district of Alaska,'" said claim being more particularly described substantially as follows:

Beginning at a post marked "No. 1," in the northwest corner where this notice is posted; thence, running 2,640 feet in a south direction, to a post marked "No. 2,"

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southwest corner; thence, 2,640 feet in an east direction, to a post marked "No. 3," southeast corner; thence, 2,640 feet in a north direction, to a post marked "No. 4," northeast corner; thence, 2,640 feet in a west direction, to the place of beginning. The initial corner No. 1, Butte monument, bears south 38 deg. 51' 35" west, 21 deg. 38 feet distant. Butte monument is 3½ feet base, 3 feet high, built on first peak north of timber line about 3,000 feet south of the summit of Carbon Mountain on Carbon Ridge, between Carbon Creek and headwaters of Glacier Lake; and,

Whereas said Kinkaid has heretofore paid the sum of \$1,000 to the said Hammond as part purchase of said claim, and has also this day paid the additional sum of \$1,800, the balance of said purchase price; and,

Whereas the survey of said claim has not yet been approved by the proper authorities and entry thereof has not been made and the bona fides of said location and the rights of said Hammond have not been established therein; and,

Whereas the undersigned, Harry White and M. A. Green, are willing to guarantee to the said Kinkaid that said location of said claim and the survey thereof as heretofore made by D. B. Skinner, civil engineer and United States deputy land and mineral surveyor, is according to the rules and regulations of the Department of the Interior and will be duly approved by the Department of the Interior, and that the said entryman and his agents have in all things complied with the laws of the United States and their acts are bona fide and free from any question brought by the Government, and are willing to further guarantee that patent will issue in due time on said claim in compliance with the laws of Congress:

Now, therefore, it is agreed by the undersigned, in consideration of \$1.00 and other good and sufficient considerations, that they and each of them, severally not jointly, hereby guarantee to protect and hold harmless the said M. P. Kinkaid in the purchase of said claim, and guarantee and agree that the same has been duly and regularly located as provided by the laws of Congress, and that the survey thereof as aforesaid has been duly and regularly made and will be in due time approved by the Department of the Interior, and that the said entry and all parties acting in and for the same have acted within the laws of the United States and in good faith, and that patent shall issue thereon to the said Kinkaid without interruption or contest by any individual or by the Government.

It is understood, however, that the said Kinkaid has the option, on or before the 15th day of December, 1908, of transferring said claim to a corporation now existing or to be created for the purpose of consolidating sixteen claims in the vicinity thereof as provided by the act of Congress entitled "An act to encourage the development of coal deposits in the Territory of Alaska," approved May 28, 1908, and receiving therefor one-sixteenth of the stock of said company upon paying his pro rata of the additional expenses incurred by said company in its organization and consolidation of said claims, or such proportion of the stock, less his proportion of said expenses, at his option, and in such event said company or corporation shall perfect said title and acquire the patent therefor from the Government, and upon due compliance with the provisions of this guarantee said undersigned shall be released herefrom. It is further understood that said corporation shall be incorporated under the laws of the State of Washington with a capital stock equal to the approximate value of said claims and shall be paid in full by the surrender of said claims and transfer thereof to said company.

In witness whereof the said Harry White and M. A. Green have hereunto set their hands and seals this — day of November, 1908.

Executed in the presence of—

Hon. M. P. KINKAID,
Member of Congress,
House of Representatives, Washington, D. C.

DECEMBER 29, 1908.

MY DEAR MR. KINKAID: Enclosed please find certificate of Seattle-Alaska Anthracite Coal Co. for 250 shares of the common stock, which has been issued pursuant to understanding with Mr. Harry White. I delivered Hammond's deed to the company on receipt of this certificate.

Trusting that the same is satisfactory to you, as arranged by me, and with best wishes for the new year, I remain,

Yours, very sincerely,

Mr. BRANDEIS. I now introduce letter of Mr. Ballinger to Mr. Harry White of November 17, 1908.

LETTER FROM R. A. BALLINGER TO MR. HARRY WHITE, NOVEMBER 17, 1908, ANSWERING QUESTIONS WITH REFERENCE TO CONSTRUCTION OF ACT OF MAY 28, 1908, RELATING TO ALASKA COAL LANDS.

NOVEMBER, 17, 1908.

Mr. HARRY WHITE, *Seattle, Wash.*

DEAR SIR: You have propounded to me certain questions upon which you desire an opinion, as follows:

1. Can a coal corporation, organized for the purpose of acquiring and operating coal lands, under the act approved May 28, 1908, entitled "An act to encourage the development of coal deposits in the Territory of Alaska," contract with a railway company operating in Alaska for the transportation of coal from the mines of such coal company on a tonnage basis for a specified number of years?

2. Could such railway company, possessing the corporate power, loan or advance to such coal company moneys for mine development and the improvement of the coal properties, and secure such loan or advance by a mortgage upon the coal properties and assets owned by said coal company?

3. Could a railway company organized and operating in said Territory have the right to buy from such coal company and sell coal in the open market?

4. Could the owners of stock in such coal company also own stock in a railway company carrying coal under contract of transportation with said coal company?

In answering these questions, it is necessary to keep in mind the act above referred to, and particularly the third section thereof, which imposes rigid restrictions against combinations in the form of an unlawful trust and in restraint of trade in the mining or selling of coal, a violation of which would result in the forfeiture of the coal lands acquired pursuant to said act. It is also necessary to keep in mind the act of June 29, 1906, being that portion of the Hepburn Act relating to transportation by railroad companies of articles or commodities manufactured, mined, or produced by it, or which it owns or in which it has any interest, etc.

Answering the first question, I can see no legal objection whatever to such contract, provided the same is free from conditions in restraint of trade or tending to create a monopoly.

Answering the second question, there could be no legal objection to such loan or form of security, provided it was made in good faith, without intent to secure an interest in the property, but solely to secure necessary advancements. Difficulties, however, exist in respect to the foreclosure of such mortgage, as in case the railway company had to buy the coal lands at judicial sale it would not be permitted to operate the same in violation of the Hepburn Act above referred to, nor as against the provisions of the act of May 28, 1908, could it hold more than 2,560 acres of such coal lands at any one time without being subject to the forfeiture thereof as provided in section 3 of the last named act. Loans or advancements to pay the government price of such coal lands and security thereof by way of mortgage would be ill advised until an expression or ruling from the Interior Department sanctioning the same is obtained, although I see no reason why the department would not sanction the same. It must be borne in mind that the purpose of the act of May 28, 1908, was, as expressed in the title, "to encourage the development of coal deposits in the Territory of Alaska." To this end existing claims were authorized to be consolidated and patented, to the extent of four sections in area to one company, but with a rigid defeasance clause in the patents so issued in case the lands fall under the control of an unlawful combination, or are the subject of a contract or conspiracy in restraint of trade in coal. Congress must have realized the necessity of the employment of large capital in the development of these deposits, and also of the construction of land transportation to bring the product of the mines to seaboard. No cooperation of capital in securing both these necessary elements—i. e., mining and transportation—could be unlawful or productive of a forfeiture unless violative of the combination and conspiracy clause of the coal land act or of the provisions of the Hepburn Act. And certainly the loaning of money by a railway company to a coal company to enable it to open and operate its deposits of coal is not in itself contrary to the letter or spirit of these acts.

The third question must be answered in the affirmative. So far as either act above referred to is concerned, there is nothing that would interfere with the railroad company transporting, buying, or selling coal so long as its contracts with the coal company were free from conditions which would amount to an unlawful combination or conspiracy in restraint of trade in the selling of coal taken from land patented under said act.

As to the fourth question, I am of the opinion that while the railroad company itself, as such, could not own any interest, direct or indirect, in the coal lands or mines operated by such coal company, such prohibition would not prevent a stockholder in the railroad company from acquiring stock in the coal company, provided the stockholder did not own or control a majority interest of the stock in such railroad company. In other words, I can see no objection to a minority stockholder in the railroad company owning stock in the coal company. When, however, such interest amounts to a control or gives the power of control, it is doubtful if such right would exist. Again, I do not think a stockholder in such coal company could own a controlling interest in the stock of the railroad company for the same reason.

In conclusion, it is my opinion that the Government is interested in seeing the development of railroad facilities, as well as the deposits of coal in Alaska, and that so long as each separate industry is developed bona fide and free from any contract, combination, or conspiracy in restraint of interstate commerce or trade in the mining or selling of coal, no impediment will be thrown in the way by the Government.

Respectfully submitted.

Mr. BRANDEIS. I now introduce the affidavit of Mr. Harry White of July 10, 1909.

STATE OF WASHINGTON, *County of King*, ss:

Harry White, a citizen of the United States, of legal age, whose post-office address is Los Angeles, California, being duly sworn, hereby on oath deposes:

Q. Mr. White, I would like your opinion as to whether or not the present coal land law should be amended so far as to allow the consolidation of more than 2,560 acres of land?

A. Yes, sir; I think it should be, for the reason, to the best of my knowledge and belief, the present stockholders in the company in the Katalla district are not financially able to supply the money to open up the mines, and in order to do so they must bond the property, and in my investigation for one company that asked me to do so I have found in three cases that the people that buy bonds say they will not furnish enough money to properly open up a mine on an acreage unless there is more than 2,500 acres in the company, but they would if there was from 4,000 to 6,000 acres, or, that is, they wanted enough acreage so that they could open up a mine and have enough acreage in the company to make good security for the bonds.

Q. How many years do you think it would take to mine all the coal from 2,500 acres up in Alaska?

A. One company, with the present methods of mining, it should take them one hundred years at least. I couldn't say for sure, but it would take them that long at least.

Q. At the rate of mining, say, 1,500 tons a day?

A. I don't know how many tons a day, but I know here in Washington they started thirty years ago on two or three hundred acres up there and they haven't mined it all yet. So at the same rate it would take over a hundred years to exhaust 2,500 acres; but the consolidation is not because there is any danger of exhaustion in the supply, but, as I said, in securing the money. On account of the topography of the land it is such that if less than 2,500 acres were organized at the present time more than one-half of them would be expected to build very extensive railroads to get around to them, while if they were allowed 2,500 acres or more they could build one railroad and proceed to mine.

Q. I wish you would give me the names of the persons having coal claims in Alaska who you interested.

A. Well, I—when I say myself, there were three or four other people who were getting the people.

Q. Do you know which ones you interested?

A. Mr. Brawley was interested with me in getting these, and he is dead. Well, there was E. B. McFarland, Portland, Oreg.; H. O. Hollenbach, Seattle, Wash.; Fannie T. Weaver, C. H. Prescott, Watson Allen, Mrs. Frank Watson, Portland. I might say that Mr. Brawley and another party was with me at the time. My brother went in there himself, and they really got their own claims.

Q. M. A. Green located himself?

A. Yes, sir.

Q. Who located John H. White?

A. John H. White, I think Mr. Green located him, because he was paying Mr. Green anyway.

Q. Did you interest Mr. Wood?

¶ A. I interested him in buying that claim. It is hard to tell which interested them, as we all went in together. [Continuing with names] W. B. Rinehart; F. A. Morrow got his own claim. Cora Green, located by M. A. Green. In fact, Mr. Green located them all, but I would interest them. The Kinnears, Charles and R. M., Mr. Brawley interested. Willard Goodwin, I arranged for Duncan McKinlay to buy that claim.

Q. When did Duncan McKinlay buy it?

A. After Goodwin located it; two or three years ago. John Wallace, Mr. Green located him. M. S. Jones, Mr. Green located him. Mr. Metchin. It is hard for me to tell now, because Mr. Green located in fact all of them. B. F. Leed spent some years up there and secured those claims there himself, and I think he had—Mr. Green had him locate all of them. Mr. Green located G. H. Brown. I was interested in getting Walter Wyman to take the claim. Mr. McFarland helped interest these people himself in these claims; Mr. McFarland had his wife to take one. L. M. Crossman, Mr. Green located. They paid Mr. Green entirely for the work. I was with Crossman at that time.

Q. Did you interest J. N. Gillett, present governor of California?

A. Yes.

Q. Did you locate him?

A. No; he bought a claim.

Q. Did you interest him in the purchase of it?

A. Yes, sir. He wanted to get in before, but did not, so he wanted me to find one for him, so I got it through another party.

Q. When did he buy it?

A. It must have been a couple of years ago. I can't exactly remember.

Q. Isabella Gillett is his wife?

A. Yes, sir. She bought the assignment from Martin J. Hale, I think. I remember she had lots of trouble about a deed; that it got lost in the mail and it was some time before it was located.

Q. Did you interest Congressman McLachlan?

A. Well, I don't know whether any—whether I was the one to interest him or not. I told him about it. He bought the claim and paid for it. He bought an assignment.

Q. When was that?

A. I can't remember.

Q. Was it in 1906 or 1907?

A. It was later than that, I think. I think it was just about a year ago, but I can't remember; I could tell by looking up in my books.

Q. The reason I have asked you that question is because I have not got an exact record of it, and in making my report I should give the dates of the assignments of these claims.

A. I can't tell just now, but I don't think it was more than a year ago, but I don't know. The reason was, it seems to me, that somebody told me that he did not finish paying until he got his stock. I can write and find out.

Q. What was the understanding among these persons who you have mentioned, when they first became interested?

A. These first people?

Q. The people that you have mentioned about buying the claims; had them transferred to them.

A. They understood distinctly, that they, under no circumstances, had any right to make any combination of any kind whatever.

Q. They did not make any agreement to consolidate their claims?

A. Not to my knowledge.

Q. Was it not their understanding, a tacit understanding, among themselves, that they would, after securing patent, consolidate their claims with a view to mining them?

A. I don't know anything about what their intention was. The only thing I know was that Mr. Wood saw me about a year after he got his claim and said he had been thinking over the matter and wanted to know if it could not be consolidated. That was after he got his claim. But these first men that first located, we intended to put them in together. That was before this law was passed. We intended to consolidate in groups of four, 640 acres each, and to put \$5,000 worth of work on them.

Q. You never sold any stock?

A. No, sir. Our idea was to go ahead and mine and let the rest lay until the Government took it up. Then following that the law of April 28, 1904, was passed.

Q. When was this Alaska Anthracite Company organized?

A. I think about 1904. We had a meeting of this once. We proposed to come in—we were to discuss these matters thoroughly. We had a meeting, elected the

directors, and discussed the matter thoroughly, and we thought that if it was permissible by the Government of the United States to allow them to consolidate in tracts larger than 640 acres, that we would have another meeting, and I don't remember whether the attorney was instructed or whether I was, to find out and notify them about it. Anyway, in the meantime, I found that it was not permissible and so notified them, and we never had another meeting.

Q. You never sold any stock?

A. No, sir.

Q. Who was secretary of this company?

A. Mr. Rinehart.

Q. Has he the minutes of that meeting?

A. Yes, sir.

Q. Where is Mr. Rinehart?

A. In the Alaska Building. But I think Capt. Rathbone has charge of those books.

Q. Who was the president?

A. Robert Moran, but if Moran had a claim there it was miles away from the rest.

Q. Is the company still in existence?

A. It is, but the name was changed to the Katella Petroleum Company, and owning oil lands and nothing else.

Q. Who were the officers in that company?

A. Well, I don't remember, because they did not qualify; that is, they dropped out because they did not want to take on these oil lands.

Q. Well, then, as I understand it, relative to Gov. Gillett claim and Congressman McKinley and McLachlan, they bought these assignments with the idea of mining their claims?

A. Individually. They bought them, I suppose, with the hopes that they could sell them to some one wanting a large body of land; they thought they could make money some way; but I don't know what their idea was.

Q. But did not they intend to put them in a group if Congress would permit them to do that by enacting a new legislation?

A. I don't know what their intentions were about that time. They bought them—I just told them about them and they bought them. There was no understanding of any kind so far as I know.

Q. Well, their agent, M. A. Green, stated to me that they so recognized the necessity of being permitted to consolidate their claims and both Mr. McLachlan and Mr. McKinley worked very hard in Congress to get this bill through, did they not?

A. Well, I don't know anything about McLachlan and McKinley.

Q. Then you never mentioned to them the necessity of consolidating?

A. Oh, I think I have; I know I have told them that the claims were absolutely valueless standing alone, but that some one would probably want enough of them to buy them. But the claims are worthless alone, not worth \$5.00 an acre.

Q. You explained this to all the people whom you located?

A. Well, the ones I relocated; the first ones went in with a view that they could do as they pleased after they got their patent. But there was never any understanding with me at all; the only man that ever discussed it with me was Mr. Wood.

Q. Mr. Wood states that he would not have gone into the thing unless he felt that the others would go in with him and mine the coal jointly when they secured patent.

A. Yes; he called me in afterwards and said that so long as they had invested their money in there that all of us should get in and get a law passed so we could consolidate.

Q. Did Mr. Wood work for that legislation, then?

A. I don't know whether he did or not. He phoned to me one day and I called in and he was talking it over.

Q. Do you remember when you first spoke to Mr. Wood about it?

A. I remember when he bought it; I did not speak to him first about it; I don't know who did.

Q. Mr. Wood stated in his affidavit that "we intended to consolidate the claims in some manner so that we could mine the coal for the mutual benefit of each other or to so consolidate the claims so as to enable us to influence capital." He also states there that before purchasing this assignment he spoke to Congressman McLachlan and asked him about it and he advised him to take up this claim.

A. I don't know anything about that.

Q. What I want to ascertain was whether Mr. Wood was mistaken in regard to the understanding that he had relative to the mining and consolidation of the claims?

A. He did not have that understanding with me, because I told him he would have to get his title himself, but about a year later he commenced to talk about these other matters.

Q. He understood that he would have to get his claim individually, but did not he think, that since it was impossible to mine 160 acres of coal that after the patent was secured, that they could consolidate their claims?

A. I didn't know what their intention was; I told them that if they got any money out of it that they would be compelled to do that; but I was very particular not to tell them that they could go into a company. I furnished Mr. Wood a copy of the book of instructions before he took the claim and let him read it and I told him about it.

Q. When they knew an individual claim would be worthless, as before stated, why did they want to take up the claims?

A. I presume they thought that after they got their patent that some person would want to buy them out and would buy enough to make a company out of it. But every one of these people were furnished with a copy of the instructions and they had full knowledge of what the instructions were.

Q. Then none of these claimants could have got the understanding from you that when patent was secured that they would then consolidate their claims?

A. I could not tell what they would do with their claims. The idea, no doubt, if everybody was that when they had permission to consolidate that they would do it.

Q. Would not you say that while there was no obligation to consolidate their claims after patent was secured, didn't they feel that each one was morally obligated to so consolidate their claims?

A. Not unless it was for their own self-interest. There was with these first people all the way through, but these last men were men who understood the law thoroughly.

Q. Was A. B. Crossman one of the old persons?

A. He was located about the same time; I think he was one of the old ones.

Q. Did you interest Mrs. Crossman?

A. I never saw her or spoke about it to her whatever. Mr. Crossman told me his wife had property and she wanted a claim.

Q. Didn't you ever have any correspondence with her whatever?

A. No, sir. He told me his wife had property of her own and wanted a claim, and I had Mr. Green do the locating.

Q. Did you know that Mr. Kincaid had a claim?

A. Yes, sir.

Q. Did you know him?

A. I knew him very well.

Q. Who is he?

A. He is a Congressman from Nebraska.

Q. Whose claim did he purchase?

A. I would have to look that up.

Q. When did he purchase his claim?

A. He paid Mr. Green, if I remember correctly, the amount of money that was due on the work and so on, and I think he may have paid one hundred, two hundred, or three hundred dollars for the assignment; that was all put up in the bank and it was all done through his attorney, who was to look after everything for him. He had Judge Ballinger attend to it for him.

Q. Attend to securing his claim?

A. Yes, sir; to secure the stock in the company. He never got any claim made direct to him. He got stock in the company that was intended for this claim, in the Seattle-Alaska Anthracite Company.

Q. Who had the claim before?

A. A. B. Hammond.

Q. Where is Hammond?

A. He had taken the claim up and had failed to pay for the surveying, and he transferred it to the company, and Judge Kincaid wrote and asked me if I couldn't get a claim for him, and I wrote him about this claim.

Q. How much did he pay?

A. About \$1,800 for the whole claim. He paid whatever the assessments were.

Q. Have you the records to show what these various persons paid?

A. I think I have. I gave them receipts and always kept a copy.

Q. Were these assignments filed for record in the land office at Juneau?

A. No; at Katalla.

Q. Were they sent to Katalla?

A. I suppose so.

Q. Then all of the coal claims located prior to 1904 were located and had the understanding to consolidate their claims?

A. The law provided that four people could associate themselves together and take possession of 640 acres of the unsurveyed coal lands in Alaska. They could perform \$5,000 worth of work upon that property, and whenever the survey of the land

was extended to Alaska, then they would be permitted to have perfect title to that 640 acres under the same rules and regulations that they were allowed out here in the States.

Q. Then they did locate them with the intention to consolidate the 640 acres?

A. Yes, sir; under that law.

Q. All persons who made a location since the passing of the Alaska coal-land law had no understanding whatever relative to the consolidation of the claims?

A. Only as I stated about that company; that they thought they could do it, and the department was asked and found that they could not do it, and so the company was changed and we took up oil lands.

Q. Did you interest J. F. Chilberg?

A. Mr. Green located him; I presume that I did as much as anyone. All the money has been paid to Mr. Green, I presume, but I don't know anything definite about it.

Q. Who has the records of all payments made by these various claimants?

A. I presume Mr. Green has. I have copies of the receipts I gave to everyone for the money.

Q. Did you have some correspondence with a woman in New York City relative to her coal claim in Alaska?

A. The only one is Miss Mayher. They were trying to get her to come into the company.

Q. Did you interest Miss Mayher in the claim?

A. Yes, sir; I interested her as a locator.

Q. When was she first located?

A. Probably three years ago.

Q. Did you represent to her that when patent was secured that she could consolidate her claim?

A. No; I was very particular not to tell her that. We had explained to her positively that she would have to pay her \$10 an acre herself.

Q. Was it not expected that she would then consolidate her claim after paying the \$10 an acre and securing patent, to consolidate her claim with others so as to have sufficient area to properly mine?

A. Her attorney explained to her positively that there would be no understanding whatever as to what she should do with her claim. What she had in her own mind I do not know. She expected, of course, that she would let somebody buy it. She was the only one who never put her claim in.

Q. Have not you and Mr. Green and Mr. Rathbone been writing to her to put her claim in the company?

A. Yes, sir.

Q. Did you not intimate in those letters that she was not acting fair to the other coal claimants in her refusal to do so?

A. Well, I don't know as I did that; but they wanted her to come in. I can't remember exactly what was said, but I have a copy of all the letters I have written to her. But up to date she has not expressed a desire to go in. I urged every person that I knew anything about to put in their claim.

Q. Mr. White, since the making of this statement yesterday do you wish to further explain the manner in which these claims were located? I asked you yesterday whether it was not the expectation of the claimants that they would endeavor to have legislation passed by Congress permitting them to consolidate their claims, and that if they could do so that they then understood among themselves that they would so consolidate.

A. There could hardly have been any understanding among themselves, for the reason that most of the claimants were living in different localities and not acquainted, but since reading my statement over, I now remember that I had told them that in event we succeeded in having the law passed by Congress permitting the consolidation of the claims that it would be advisable for them to do so, and since the law has been passed I have endeavored every way I could to have them all transfer their claims to corporations since organized. I might state that Mr. Wood and the rest of them probably got their ideas from this talk.

Q. From the statement that you would make to the claimants at the time they were located, did they feel under moral obligation to consolidate their claims?

A. No; I think not. At least it was not my intention to prohibit them from doing what they pleased with their claims.

Q. I failed to ask you yesterday whether any representations were made to purchasers of stock in the company that was formed as to the company owning coal lands in Alaska.

A. No.

Q. What was the name of the company under which you sold stock?

A. Katalla Petroleum Company.

- Q. Did it have another name at one time?
 A. Yes; Alaska Anthracite Coal Company.
 Q. Was any stock sold by the Alaska Anthracite Coal Company?
 A. Some; but nothing during any time that anybody had anything to do with it, any of the men that were interested in organizing, or while there was anything done with a view to taking over the coal lands.
 Q. Do you remember selling stock to Miss Perry in New York?
 A. Yes.
 Q. How much stock did you sell her?
 A. I don't remember; the company sold it.
 Q. Did you interest her in the purchase of it?
 A. Yes; but there was not any coal or anything to do with it. It was all taken by her attorney.
 Q. You didn't represent to her that the company expected at some future time to secure possession of certain coal lands in Alaska?
 A. No; it had nothing whatever to do with coal lands.
 Q. No mention was made to Miss Perry about coal lands?
 A. I probably talked with her about coal, but it was distinctly understood that there was no coal in that company. Never expected to put any in it.
 Q. What steps has that company taken with a view to selling oil?
 A. Nothing about selling oil; just got the lands.
 Q. Has Congressman Knowland, of California, any interest in any of the coal companies?
 A. Congressman McKinlay told me that he had sold a half interest in his stock to him.
 Q. A half interest in the claim?
 A. No; in the stock he had received for his coal claim. He put his in the company a long while ago.
 Q. Do you know what connection Mr. Earling has in reference to one of the coal companies?
 A. No; I don't know whether he has any connection at all or not.

HARRY WHITE.

Subscribed and sworn to before me this 10th day of July, 1909.

L. R. GLAVIS,
 Special Agent, G. L. O.

Mr. BRANDEIS. I now introduce the following letters in relation to the claim of Mr. W. G. Whorf: Letter of Mr. Ballinger to the register and receiver, Juneau, December 23, 1908, and letter of the register and receiver, Juneau, to Mr. Ballinger, December 29, 1908.

DECEMBER 23, 1908.

REGISTER AND RECEIVER U. S. LAND OFFICE,
 Juneau, Alaska.

GENTLEMEN: As representing Mr. W. G. Whorf, he has informed me that he has heretofore left with you for filing his notice and declaration in his coal entry at Port Graham. Upon his stating to me that you were unwilling to file the same on account of your uncertainty as to the attitude of the department in such cases, the time having elapsed within which they should have been filed and the original papers having been lost in the mails, I communicated immediately with the Commissioner of the General Land Office, furnishing him affidavits of the loss of the original papers in the mails, and have received word by telegram, as well as by letter, from the commissioner to the effect that you would be requested to accept for filing, nunc pro tunc, Mr. Whorf's papers. I also have a copy of the letter addressed to you by the Commissioner of the General Land Office, of date December 17th, covering the attitude of the commissioner in this respect.

Mr. Whorf leaves here on the 31st for Juneau and will re-present to you for filing the notice and declaration, and he desires to make his entry and carry the same to patent as speedily as possible. I will very much appreciate your diligent attention to this matter, and will request that you advise Mr. Whorf fully as to the details necessary to pursue to secure patent in his entry, all of which will be duly appreciated.

I inclose herewith copy of letter from the commissioner of December 17th, transmitting copy of letter to you in this matter for your information.

Yours, very sincerely,

JUNEAU, ALASKA, December 29, 1908.

Hon. R. A. BALLINGER, *Seattle, Wash.*

SIR: We have to acknowledge the receipt of your letter of December 23, 1908, in the matter of the filing *nunc pro tunc* of the location notice and other papers by Mr. W. G. Whorf for his coal land claim at Port Graham, Alaska.

By the same mail we have received instructions from the Commissioner of the General Land Office to allow such filing when tendered, said instructions being contained in letter "N" of December 17, 1908, a copy of which you advise us you have received.

We will be pleased to facilitate Mr. Whorf's matter in every possible way, and upon his arrival in Juneau will be able to assist him in initiating his application for patents so that he may at once begin the posting and publication of his notice thereof.

Respectfully,

JOHN W. DUDLEY, *Register*
P. M. MULLEN, *Receiver.*

Mr. BRANDEIS. I now introduce letter of Love to Glavis, January 17, 1908, and Glavis to Love, January 31, 1908:

JUNEAU, ALASKA, January 17, 1908.

Mr. L. R. GLAVIS,
Chief Field Division, Portland, Oreg.

SIR: I have the honor to acknowledge receipt of your communication of the 14th instant, received 14th instant, advising me that you are in charge of all matters relating to Alaska coal lands, with instructions to me therein, and directing that I forward to you all data secured and other information.

In compliance with such directions, you are advised as follows, with inclosures as hereinafter noted.

My records show that in the Katalla field filings have been made as follows: Through Clarence Cunningham, agent, and surveyed for patent under Nos. 37 to 62, 64, 66 to 71. Notices therein are inclosed, together with unsigned letter of March 12, 1907, to R. and R., Juneau, with addresses of applicants. Also, copy of sworn statement, August 5, 1907, by Fred H. Mason. These cases are now pending in the General Land Office.

Through M. A. Green, agent, and surveyed for patent under Nos. 149 to 150, 152 to 153, 158, 161 to 171, 173 to 175, 178 to 186, and 188 to 191. Notices therein are inclosed, together with a list of addresses of applicants. Also, copies of sworn statements by J. F. Watson, July 5, 1907; Harry White, July 30, 1907; A. B. Crossman, August 1, 1907; C. M. Cartwright, August 1, 1907; H. J. Morrison, August 2, 1907; D. H. Brown, August 2, 1907, and of F. C. Harper, August 5, 1907.

Through A. H. Stracey, agent. Inclosed as affecting such filings are copies of sworn statement of C. F. Munday, August 8, 1907; of certificate of H. K. Love, special agent, re interview with William Gottstein, dated August 7, 1907; of sworn statement of Agent Love, re interview with Walter S. Fulton, dated August 10, 1907; same, dated August 10, 1907, re interview with Scott Calhoun; and same, dated August 10, 1907, re interview with R. S. Cox, jr.

Through S. C. Chezum, agent. Inclosed as affecting such filings is copy of the sworn statement of Mabel B. McIntyre, dated August 5, 1907.

Through W. N. Letcher, agent. Inclosed as affecting such filings copy of the sworn statement of Frederick and William Felitz, August 8, 1907, and such of Andrew N. Lydon, same date.

Through E. J. Rathbone, agent, and surveyed for patent under Nos. 156 to 157, 159 to 160. Notices therein are inclosed.

Through O. L. Willoughby, agent. Inclosed as affecting such filings copy of sworn statement, July 30, 1907, Fred S. Stanley, and such of George H. Hill, dated July 30, 1907.

Through J. R. Young, agent. As affecting such are inclosed two sworn statements by J. W. Young, dated July 27, 1907.

Through C. H. Doughton, agent. As affecting such filings are inclosed certificate August 3, 1907, of Horace Tillard Jones, special agent, re interview with Martin J. Kalez et al.; sworn statement of Fred Jacobs, corroborated by Andrew Anderson; sworn statement of G. H. Mueller, August 4, 1907; and copy of a sworn statement by C. H. Doughton, August 14, 1907.

Through A. B. Hunt, agent. As affecting such, inclosed is a copy of a sworn statement, dated August 10, 1907, by Henry R. Harriman.

Through James Waddell, agent. As affecting such are inclosed copies of sworn statements by Mrs. E. E. Foote, August 9, and Oscar Foote, August 10, 1907.

Through George Simmonds, agent. As affecting such filings is inclosed copy of certificate, Agent Love, re interview with William Devere and George Hartig, August 9, 1907; also copy of sworn statement, August 10, 1907, Agent Love, re interview with Oldham Gates. (NOTE.—M. C. Sweeney, of Seattle, seems interested in all or most of the Simmonds' locations, altho he denied to me any such interest.)

Through C. Christopher, agent, Seattle, and through Torger A. Feed, agent, Grand Central Hotel, Seattle, and through Jno. W. Hartline, agent, Katalla.

My records also show that in the Matanuska field filings have been made through Frank Watson, agent, and surveys for patent therein under Nos. 86-148. Notices of applications are inclosed, together with a letter, as affecting such, Watson to Love, dated July 13, 1907, and copy of a sworn statement by Harvey S. Moore, August 3, 1907.

My records further show alleged claims on the Yukon River by James T. Royles as agent, and inclosed is a copy of a sworn statement by Royles, dated July 31, 1907, therein.

Such records show, too, locations made at Homer, Kachemak Bay, through W. W. McAlpin, William H. Mackey, and John M. Bushnell, as agents.

Also locations on Herendeen Bay, Port Moller, through Robert A. Foster as agent.

Also a case (No. 117) alleging that McDonald and Kattlett, Katalla, Alaska, have agreement to purchase, pending entry, of claims by Swedes, names unknown, entry to be perfected by the Swedes.

The records of the U. S. land office, Juneau, show locations at Katalla by Archie W. Shields, agent; by A. F. Runnels, agent; by David H. White, agent; by Raymond Brown, agent; William L. Dunn, agent; L. A. Thurston, agent; by T. J. Flynn, agent; and by Gus W. Winckler, as principal.

Those records also show filings at Salmon Bay, Admiralty Island, by N. E. Smith, agent; George Harkrider, agent; and by Martin Lorentzon as principal. Also, near Point Gardner, Admiralty Island, filings by Delia V. Walsh, agent; Charles W. Wells, agent; Harry Bishop, agent; and as principals J. H. Cobb, Fred D. Nowell and Thomas H. George.

The same records show filings in the Matanuska field by Charles Krefting, agent; A. M. McHenry, agent, and by Henry Tecklenberg as principal.

Those records show filings at Chignik Bay by A. E. Dickerman, agent; at Takhli Bay by Vasilir Todaga and John J. Folstad as principals; at Herendeen Bay, Port Moller, by G. R. Cunningham as principal, and at Aniakchak Bay by W. E. Bowman, Paul Morrison, L. L. Bowers, Martin Larsen, Harold Johnson, John B. Nilsen, Cecil King, Joseph A. Silvermann, Arthur Rohgal, George Noomoff, William E. Pence, Henry P. Cope, and Albert C. Goss, all as principals, with post-office addresses at Kodiak, Alaska.

Such records also show filings by Than Kelly, agent, post-office address Odessa, Washington, on the Chulitna River, ten miles above the Shushitna River.

The same records show filings for claims lying in the Eagle City recording district (now in the Fairbanks land district), on the left bank of main fork, Charlie River, by N. R. Hudson and C. A. Bryant as principals.

Same records show filings for claims lying in the Fairhaven recording district (now in the Nome land district) one and three-quarter miles up Chicago or Granite Creek, Kugruk River, by Thomas Roust as principal (now conveyed to T. S. Solomons, and, Alaska), and on Kugruk River, 30 miles above its mouth, by Daniel D. Garvey and D. L. MacDonald as principals.

Inclosed also please find copy of report to the honorable Commissioner, G. L. O., dated August 10, 1907, made by Special Agent Jones, of preliminary investigations made in the matters in question.

Very respectfully,

H. K. LOVE,
Special Agent, G. L. O.

PORTLAND, OREG., January 31, 1908.

Mr. H. K. LOVE,

Special Agent, G. L. O., Juneau, Alaska.

Sir: I am in receipt of your letter of the 17th instant, together with the inclosures therewith. Since writing you on the 4th instant, I have been advised by the honorable commissioner that you made favorable reports upon the Cunningham group, the names of the entrymen being as follows: J. G. Cunningham, Michael Doneen, Arthur D. Jones, Orville D. Jones, Walter B. Moore, Ignatius Mullen, F. F. Johnson, N. B. Nelson, John A. Finch, Henry White, Charles Sweeney, Hugh B. Wick, Fred Davidson, F. Cushing Moore, C. J. Smith, Horace C. Henry, Henry W. Collins,

2096 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

Alfred Page, Frank A. Moore, A. R. Campbell, B. C. Riblett, Henry Wick, William R. Miller, Andrew L. Schofield.

Kindly forward to me at your earliest convenience a copy of said report, together with any affidavits which you may have in the premises.

Respectfully,

L. R. GLAVIS,
Chief Field Division.

Mr. BRANDEIS. I now introduce letter of Love to Ballinger, April 28, 1908.

JUNEAU, ALASKA, April 28, 1908.

HON. R. A. BALLINGER, *Seattle, Washington.*

DEAR SIR: I am obliged to ask that you give me of your valuable time sufficient to read and consider this and inclosures.

On Jan. 28, Mr. D. M. Goodrich, who was first lieutenant of my troop in 1898, and who is a great personal friend of the President, wrote me that the President had written him that he had directed that I should be appointed to the first vacancy in Alaska U. S. marshalships.

March 4 he wrote that the President had written him, and Secretary Garfield had twice, to the effect that because of some transgression on my part, in present place, I could not be considered in that connection. In the Secretary's second letter he said he was taking the matter up with me direct.

I received that letter on March 15, and at once wrote to the honorable secretary (through the Commissioner of the G. L. O.) asking what the charges were, and for investigation, inclosing Mr. Goodrich's letter. Inclosed you will please find copy of this letter, marked Exhibit "A." It should have reached Washington by March 28 or 29.

April 1st the commissioner wrote me, advising me of certain charges; it is fair to presume that these are those made to Mr. Goodrich. Copy of this letter, marked Exhibit "B," is inclosed.

Under date of April 16 I replied to those charges, as shown by inclosed Exhibit "C." It is plain that if these charges are true, I have quite properly forfeited the regard of the President, and of other valued friends, and ruined ten years of honorable service. And, second to this, that I have lost every chance of obtaining a position very much to be desired in interest of family and otherwise.

And it is just as plain, if unjustly accused, I am being terribly wronged.

These charges must have been filed in the General Land Office during your incumbency, and acted on, for on January 4 Glavis wrote me assuming charge of coal-land matters, and Mr. Goodrich's last letter is dated March 4. But I do not believe (whether mistaken or not) that you gave this matter your real attention, or personally directed the course pursued. I feel sure your broad and judicial mind would have given me a hearing before condemnation, and that the weak spots in the ex parte evidence would have appealed to you.

Therefore, sir, I now come to you asking that, if you consider I have been wronged, you help to right matters. I ask nothing of favor or sympathy, just the "square deal" promised almost four years ago. For ten years I have enjoyed the President's good will; I believe, possessed his confidence. I am to lose this. I am poorer than when I came to Alaska three years ago; my opportunity for betterment is to be taken from me.

You will, I feel sure, recall each incident I have recurred to in which your name has been used, and subscribe to the correctness of the statement as made.

When you have looked into the record (that made prior to your advent) will you not admit that at the time Jones was sent to Alaska I had complied, as was complying, with orders relating to the coal lands? If so, was it fair to send anyone, in the way Jones appears to have been sent, to supersede me in that work? True, I had written the office that inquiries should be conducted at Seattle and other points out of Alaska, as claimants were nonresidents. But there was not a word to me that his assignment was the result of this; he did not show me any letter of instructions. He showed me copies of my letters of 1905; nothing more.

Again, apparently on Jones's say (uncorroborated by the record) I was, in a very abrupt manner to say the least, set aside by Glavis. Several times you said to not be afraid to criticise the G. L. O. I now ask if the above was fair or the method of it?

This, sir, is a simple appeal to your sense of justice.

Here in Alaska and in Utah, I have secured evidence whenever I could, affecting the bona fides of coal-land locations, and have made good and honest effort to protect such lands. Whether the department be aware of it or not, when ordered to Alaska, I had secured eleven pages of sworn confession by a fraudulent coal locator, naming five others, and involving the Rio Grande Railway Company. This was turned over

to Agent Hair, together with the name of another who had promised to make a like statement. This was the first evidence secured in Utah; I believe used as the entering wedge in the investigations that followed in Utah. The Salt Lake Herald announced that I was sent to Alaska because I was interfering with the railway schemes.

Now, I am made out a poor weakling! Because I am candidate for marshal. My only hope for the marshalship lay in the President's good will; was the way to secure such to be pusillanimous.

So have I endeavored to get the truth here in coal matters, as witness the sworn statements of Munday, Doughten, and others, and information in the Christopher and Simmonds groups, etc. I believe results as submitted by me will compare favorably with those of Jones's, if not so voluminous.

I do not want to brag, but I am willing to fight.

My life here, private and official, has been clean. You will find nothing to the contrary; nothing to justify the dishonoring of me.

If you find yourself convinced of my view of the matter, I beg you to take such course as may seem right to clear me.

Very respectfully,

(Signed) H. K. LOVE.

Mr. BRANDEIS. I now introduce letter of Ballinger to Love, May 4, 1908.

SEATTLE, WASH., May 4, 1908.

Mr H. K. LOVE, Juneau, Alaska.

MY DEAR SIR: I am in receipt of your letter of April 28 and am much surprised at its contents, as no charges against you were brought to my attention during my incumbency. I did not understand that the assigning of Glavis coal-land matters in Alaska was intended as any reflection upon you or your service. As an assurance to you that such is the fact I will state that I sent to Secretary Garfield in the latter part of March a telegram recommending you, together with another party, for favorable consideration for the appointment to the marshalship in Alaska. I am also surprised to find from your letter that there was or is any disposition on the part of Special Agent Jones to treat you unfairly or to misrepresent your conduct in connection with your work. The only criticism that has ever been made to me respecting your service is that you were not as vigilant and as active as you might have been, were you not a candidate for appointment as marshal. In Washington I spoke to McKenzie about this criticism, and he assured me that there was nothing in it—that according to his observation you had always faithfully and earnestly pursued your duties. This is the only matter that has in any way affected my judgment respecting your service in Alaska, and, notwithstanding these criticisms, I have always believed you to be capable, straightforward, and honest. Not knowing any of the facts that are the basis of complaint, I am, of course, unable to pass any opinion respecting the same, but I am reluctant to believe that there is any ground for the complaint or charges which you speak of. I do not know how to be of any service to you in this matter. What I have stated above must necessarily assure you that any action heretofore taken during my incumbency as commissioner was not from any prejudice or lack of confidence in you. You are at liberty to use this letter in any way you see fit in the interest of fair play and a square deal.

With best regards, I remain,

Yours, very respectfully,

R. A. BALLINGER.

Mr. BRANDEIS. I now wish to introduce letter of Mr. Love to Mr. Ballinger of May 12, 1908.

JUNEAU, ALASKA, May 12, 1908.

Hon. R. A. BALLINGER, Seattle, Wash.

DEAR SIR: I thank you very sincerely for your letter of the 4th instant. Throughout it bears the stamp of your faith in me, and your good will. Permit me, please, to say that its courtesy is not a surprise to one that has had even the slightest personal contact with you and your effective graciousness. For your recommendation of me for marshal please accept my especial thanks, both for the valuable aid such must be, and as the best evidence of your consideration for me as a faithful worker. I desire that the last may be established to the satisfaction of all my superiors. I tried to do faithful work in the army, enlisted and as a petty officer, and I believe the record looks good. Later, Governor Taft gave me as handsome a letter as could be written for faithful work for three years under him. But for the present business depression, I would have severed my relations with the G. L. O.; for I had arranged a business

enterprise here, independent of the marshalship; and I hoped to take the record of a faithful worker with me.

I would like to feel very sure that you are convinced that I have not shirked, and that motives at all times have been clean; for your confidence is well worth the having, therefore, I trespass on your time. Except as concerning coal lands, Judge McKenzie can know only indifferently well of my life here. But the record shows that all the influential companies pay annual tribute, due to my endeavor: Northwestern fisheries, Alaska Steamship and Northwestern Railway, (Guggenheim concerns); Alaska packers; Northern Commercial; North American Transportation and Trading Company; Pacific Coal Storage, etc. But I am not overworked and have more than once so reported; you will remember I declined your repeated offer of assistance. Still, I have taken many a miserable journey here. I have made trail; packed 45 to 50 pounds over trailless Alaska swamp and mountain; for weeks, day and night, suffered untold misery from mosquitoes; tramped the length of every creek in the Fairbanks district, and penetrated the Mount McKinley country, getting out by floating down the Yentna on a raft, almost submerged, and had to pay an Indian \$5 per day and rations to induce him to ride on it.

These are incidents that do not appear in a daily report or elsewhere.

The marshalship has not affected my course here, and an inspection would show that all of Alaska has been fairly well covered, where justified, or is being, and that all is in reasonably good condition; whatever of exception there may be to this is in the Fairbanks district, in the abuse of the homestead law, which is difficult to enforce, and in the use of firewood by placer-mine operators; I believe, on close and careful consideration of the laws governing these two conditions, my course would be justified. At any rate the motive would be seen plainly to be absolutely clean.

There are supposed to be 33,000 white people in Alaska. Unpeopled wastes do not offer work for agents. I ask that you compare the work of the Land Office, Juneau, with that of the average office in the States. It will be found that in number of entries the Alaska office is, by comparison, small indeed; in some such proportion must the field of the agent be restricted.

Please pardon the length of this; I seek to convince you in a matter very big to me. I note and appreciate your permission to use your letter and I shall most likely avail myself of the liberty, and forward it to the honorable Secretary, for I know it must materially aid my cause.

I beg to remain, sir,

Yours, respectfully and devotedly,

(Signed) H. K. LOVE.

Mr. BRANDEIS. I now introduce letter of Mr. Dennett to Mr. M. D. McEniry, August 17, 1908.

AUGUST 17, 1908.

Mr. M. D. McENIRY,
405 Quincy Building, Denver, Colo.

MY DEAR MR. McENIRY: Many thanks for the lines of information received. They have gone to the proper quarters.

Mr. Haggott, of Colorado, tells me that the Mexicans in the southern counties of Colorado, who are sheep herders, are voicing complaints and threatening reprisal on the Republicans because they are not allowed to graze on the reserves as they and their ancestors have done for many years. Without letting Sheridan know directly who wants the information, can you not get him to keep his ears open when in that vicinity and report to me what he hears?

With best wishes to you and yours,

Very truly, yours,

Mr. BRANDEIS. I now introduce letter of Mr. Ballinger to Mr. Garfield of April 29, 1908.

SEATTLE, WASH., April 29, 1908.

MY DEAR JIM: This will introduce to you my personal friend, Mr. C. J. Smith, who has been for many years a resident of Seattle and identified with large business interest here. Mr. Smith desires to consult with you respecting the coal-land situation in Alaska, and is interested with ex-Governor Moore, whom you met last winter. Any courtesy you may be able to extend to Mr. Smith will be highly appreciated by me.

Yours, respectfully,

R. A. BALLINGER.

Hon. JAMES R. GARFIELD,
Secretary of the Interior, Washington, D. C.

Mr. BRANDEIS. I now introduce letter of Mr. Ballinger to Mr. Dennett, April 24, 1908:

SEATTLE, WASH., April 24, 1908.

MY DEAR FRED: This will introduce to you the bearer, Mr. Henry R. Harriman, of Seattle, whom I have very favorably known for some time, and who represents a number of persons interested in the coal fields near Katalla, among whom are Mr. Jippy; Mr. Hedges, of the Puget Sound Bridge and Dredging Company; Ralph Stacy; John Schram, and others.

Mr. Harriman is anxious to see some action taken by this Congress in reference to the coal-land situation in Alaska and desires to confer with you, and also, if he can have the opportunity, desires to meet the Secretary.

Any courtesy you can show Mr. Harriman will be highly appreciated by me.

Yours, sincerely,

R. A. BALLINGER.

HON. FRED DENNETT,
Commissioner General Land Office, Washington, D. C.

Mr. BRANDEIS. Now I wish to introduce note of Carr to Brown, May 4, 1908:

MAY 4, 1908.

BROWN:

There has been no change in the status of the Cunningham cases to date.

The report from Glavis has not been received as yet, and Schwartz says it will probably be an "unfavorable" one when received.

CARR.

Mr. BRANDEIS. I wish to introduce letter from Mr. Eccles to Assistant Secretary Pierce, under date of April 2, 1909:

(Copper River Railway Company, 165 Broadway, New York, S. W. Eccles, president.)

NEW YORK CITY, April 2nd, 1909.

HON. FRANK PIERCE,
*First Assistant Secretary of the Interior,
Washington, D. C.*

MY DEAR SIR: Having read with great interest the account of the hearing held on March 9th upon the coal situation in Alaska, believe you may desire the following brief statement with respect to the railroads constructed and now under construction to serve the interior of Alaska and the Behring River coal fields.

This construction has been undertaken by the Copper River Railway Company and the Copper River and Northwestern Railway Company, which two companies are owned by the same persons, and I am president of both. For brevity will consider them together for the purposes of this letter, excepting a few details. Attached map shows the railways as proposed and now being constructed.

The Copper River Railway has been constructed from tide water at Cordova to the upper end of Abercrombie Canyon on the Copper River, about 54 miles.

The Copper River and Northwestern Railway Company has been surveyed from its junction with the Copper River Railway—at the lower crossing of the Copper River—to the Behring River coal fields. From Katalla toward the coal fields about 6 miles of roadbed has been graded and tracks laid, right-of-way cleared for distance of 11 miles, a large amount of excavation and grading done, and at Katalla office buildings, cottages, employees' living quarters, hospital, and railroad yards have been constructed.

On the important construction thus outlined, \$5,707,467 have been expended up to October 31st, 1908.

In addition, contracts have been entered into for an extension of railroad construction (from Abercrombie Canyon) up the Copper River to its junction with the Chitina River, thence along the Chitina River to a point about 150 miles from the upper end of Abercrombie Canyon and something over 200 miles from Cordova. The cost of this 150 miles will be at least \$10,000,000. The work will be pushed as actively as can be accomplished with money intelligently expended by energetic men.

The line from Katalla to the Behring River coal fields, construction of which was proceeding as already stated, was stopped in 1908 because the coal locators in the field found they could not secure their patents, and it proved altogether uncertain how, if at all, these coal locators would be placed in a position enabling them to develop their properties and so furnish coal for transportation by the railroad. It became obviously unwise to construct the railroad to the coal fields until the issuance of patents to coal locators could be definitely assured, since the railroad into that section

of the country must depend upon coal for its tonnage. Provision has been made for the money necessary for construction of the road to the coal fields, and we are ready to resume and push the work rapidly to completion just as soon as the coal locations are permitted to work their properties and thus furnish the road with tonnage.

These sixteen millions of dollars (\$16,000,000) which these roads have in part expended and as to the remainder are already under contract to expend, together with the several millions more provided for the line to the coal fields, cannot be considered an investment in the ordinary sense of the term. They are amounts set aside in public spirit, combined with business enterprise, for the work of pioneering the great Territory of Alaska, now almost devoid of transportation, and consequently of people.

The completion of this railway into the interior along the Copper and Chitina rivers is of far greater importance than generally realized, while the line to the coal fields will be a vital force toward the development of Alaska in furnishing fuel for the railways and providing tonnage for them; also, and of greater public importance still, furnishing fuel for the active development of Alaskan industries and commercial enterprises generally, as well as for the domestic comfort of the people.

The vast sums of money now being expended for the construction of these railway properties is with the design of serving the greatest possible tributary territory in Alaska and to meet also the requirements of our Government.

Cordova is admirably suited for the purpose of tidewater terminus for the railway. The bay is land-locked and spacious. Here even the greatest ships can ride at anchor or lie at wharves in perfect safety. Here we have constructed wharves and provided facilities necessary for handling a large traffic with dispatch and efficiency.

Hawkins Island, directly across the bay, has been wisely reserved by the Government as a coaling station. Its location is ideal and nearer the extensive coal fields than any other possible place. Coal for government uses should be had at this station at a price much lower than at any other port on the Pacific coast.

With respect for facilities for developing the interior of Alaska, the completion of this railway construction will afford a route all the year round to and from tidewater. At present the only means of transportation throughout the greater part of the year is by sleds drawn by animals or men over mountain ranges terrible in winter, making the cost of transportation so high and the conditions so discouraging that the country can develop thereby only in the most limited way. We are paying \$200 a ton for transporting supplies by sled and pack 150 miles to our operations. Other people are paying as much or more for like service. Movement of men and supplies in and out for any kind of enterprise consumes so large a part of the year and is fraught with so much uncertainty besides that all enterprise is too seriously handicapped for expansion, and nearly all natural resources of the country are prevented from developing at all.

It is therefore obvious that the vast sums of money our interests are devoting to railroad construction in Alaska are necessary for the development of that great Territory, and we submit the enterprise to all the encouragement in the public interest that can be extended to it.

It should also be understood that the question of fuel supply for citizens settling in or opening up the interior is in that arctic region as important as the supply of food. In many cases timber is scarce. We are paying \$20 a cord for it in our construction work along the Copper River.

Nor is the situation better at tide water. At Cordova we pay about \$12 a ton for coal to supply our locomotives and machine shops. Unable to obtain native coal in Alaska, we are compelled to consume the coal from British Columbia, which also is a factor making our costs of operation and construction excessive.

Permit me to express the hope that you will share the view that the present generation who are struggling for the development and upbuilding of Alaska should be placed in position to use the coal which nature has provided within the Territory and the use of which is only prevented by the present state of our laws.

I had the honor of writing to the Hon. Fred Dennett, Commissioner of the General Land Office, a letter dated December 14th last, stating generally what we have done and propose to do. That letter was accompanied by report of same date from Mr. E. C. Hawkins, our chief engineer. The letter and Mr. Hawkins' report are included in account of the hearings of January 12th and 14th, 1909, before the House Committee on Territories in the matter of the Alaska Pacific Railway and Terminal Company H. R. 25553, and I respectfully invite your attention to pages 20 to 32, inclusive which contain these letters.

In conclusion, may I urge that fuel implanted by nature in an arctic country where fuel is essential to life should not be denied to the people of that country by a just government?

Yours, very truly,

S. W. EGGLE, President

[Following pencil notation on original: "H. R. 25553 & map—filed in transfer case."]

Mr. BRANDEIS. Also another letter from Mr. Eccles to Secretary Pierce under date of May 28, 1909:

[Copper River and Northwestern Railway Company, office of the president. S. W. Eccles, president.]

165 BROADWAY,
New York, N. Y., May 28th, 1909.

Hon. FRANK PIERCE,

Assistant Secretary of the Interior, Washington, D. C.

DEAR SIR: Some time since I had the pleasure of addressing you a communication regarding the construction and operation of the Copper River and Northwestern Railway in Alaska, and called your attention to the fuel situation. Beg to ask if it will be consistent for you to advise me as to whether or not it is at all likely that any of the locators of coal land in the Bering River coal fields are likely to receive their patents in the near future?

Our railway is now compelled to use coal mined in British Columbia and the cost at Cordova is about \$12 per ton. The coal is unsatisfactory and the cost far beyond what we can afford to pay for the economical operation of our trains. We are spending many millions of dollars in constructing the Copper River and Northwestern Railway and it will be a period of years before satisfactory net returns will be received. We have done considerable work in the matter of building a branch of our railway to the Bering River coal fields, but as the cost is excessive and with no other business in sight than that of coal and coke we have been compelled to suspend the work of constructing this line until such a time as we know that the coal mines will be opened up and a supply of fuel forthcoming.

It occurs to me that the tying up of these enormous coal fields at this time is working a great harm and injustice to the people of Alaska as well as the railways and the steamships operating in that region. I feel that the pioneers in railway construction, the opening of mineral regions, and the upbuilding of agriculture should receive the benefits from the coal mined in that Territory and not be compelled to purchase all of the fuel required by them in a foreign country; in other words, these enormous coal deposits lying at our door are locked up, and we are not permitted to use it.

Desire to impress upon you the fact that our railway is in no way interested in these coal deposits, nor is it our purpose to engage in coal mining, but we would like to build our road to these coal fields and serve each and every individual alike who desire to mine coal for commercial purposes. We need this fuel very badly indeed for our operations and so long as we are investing our millions of dollars in building the railway we feel that the Government should enable people who desire to engage in coal mining to open up their properties and supply the railways, steamships, and citizens with fuel. Am quite sure that the United States Government also needs this fuel for its own requirements on the Pacific coast.

I expect to leave here for Alaska the tenth of June for the purpose of looking over our railway construction, including the branch line to the Behring River coal fields, and if my query is not out of line and any information can be given me before my departure it will be greatly appreciated.

No one who has not visited that wonderful country can appreciate the hardships and disadvantages under which we are constructing our road and the great necessity of not only ourselves but the people in securing cheaper fuel, which is absolutely necessary for the development of that section of the United States.

It is reported in the newspapers that President Taft is likely to visit the Pacific Northwest the coming summer, and I greatly hope this is true; and if he does, I trust it may be his pleasure to visit the Port of Cordova and while there look over our railway operations; he will then realize the enormous undertakings we have in hand. I do not believe the conditions there are equalled anywhere else in the world.

Hoping you may be able to give me some information, I remain,

Very sincerely, yours,

S. W. ECCLES.

[Following pencil notation on original: "Copy of Atty. Gen'l. op. to Harvey Friend—Atty. for C. & N. Ry., June 16/09. F."]

Mr. BRANDEIS. I wish to introduce a letter from Mr. O. G. Laberee to Mr. Ballinger, under date of April 2, 1909.

[Alaska Central Railway Company, O. G. Laberee, receiver.]

OFFICE OF THE RECEIVER, COLUMBIA BUILDING,
Spokane, Wash., April 2, 1909

Hon. R. A. BALLINGER,
Secretary of the Interior, Washington, D. C.

DEAR SIR: In view of the hearing your department gave on the 9th of March, 1909 to certain parties, concerning the coal situation in Alaska, I deem it proper to put you in possession of the exact situation concerning the Alaska Central Railway project.

There has been expended on the construction of this railway to date approximately \$3,600,000. Its creditors are obliged to take the property over, and are now foreclosing the bonds, which will necessitate the formation of a new company and the raising of funds to complete the line to some point where it will pay in order to save the large amount of money already expended. In order for the creditors of the new company when formed, to acquire sufficient funds to complete the line, it will be necessary for them to be able to make some arrangements with the Government for a sufficient amount of coal lands to justify the building of the road, and they are in hopes that when the matter is properly presented that Congress will pass a law at its next session giving them aid in this direction.

I understand, however, at the present time that patents have been applied for for a considerable portion of the best coal areas on the Matanuska River by parties that are not now interested in the Alaska Central project, and should these patents be allowed it would work an irreparable hardship upon the railroad company.

In view of the foregoing, I trust that you will scrutinize very closely all applications for patents in order that there will not be any issued except to those that are justly entitled to them.

Yours, truly,

O. G. LABEREE, Receiver

Mr. BRANDEIS. I will introduce now letter from Mr. Ballinger to Mr. Laberee, dated April 7, 1909.

DEPARTMENT OF THE INTERIOR,
Washington, April 7, 1909.

DEAR SIR: Your letter of April 2 duly at hand. I note what you say with reference to the coal lands tributary to the Alaska Central Railway project in Alaska. Under existing law, more than 2,560 acres can not be taken and patented by one company. The act of May 28, 1908, authorized the consolidation of existing entries to this extent. Without further legislation I see no opportunity for the Alaska Central Railway Company to secure any of these lands. So far as applications for patent on lands heretofore entered in the Matanuska district are concerned, the action of this department will be irrespective of the interests of any party or parties, except as they bring themselves within the law.

Very respectfully,

R. A. BALLINGER,
Secretary

Mr. O. G. LABEREE,
Receiver Alaska Central Railway Company,
Columbia Building, Spokane, Wash.

Mr. BRANDEIS. I also wish to introduce a letter from Mr. Arthur R. Bowman to Glavis (Aug. 30, 1909).

GREAT NORTHERN HOTEL, CHICAGO

Mr. L. R. GLAVIS,
Chief Field Div., G. L. O., Seattle, Wash.

SIR: Am very sorry to have missed you here, as I had several matters that I wished to go over with you.

You will find all of the papers in my small grip, which I left sitting in the office. Reports can be made on Wells, Stracey & Smith groups, I think, without any further investigation; also on Kelly group, as I secured a very complete affidavit from him the morning I left Seattle.

The R. & R.'s affidavits are also in this grip, as are also practically all of the letters to the R. & R. at Juneau, relative to coal claims that have been received since 1900.

passage of the act. Only 3 or 4 of these are of especial importance, as I remember just now—both from Cunningham—one states that he will take the excess funds paid into R. & R. & distribute equally among his claimants or keep in common fund or something to that effect, & in the other he states that he was shown all the reports, recommendations, etc., of special agents while at G. L. O., at Washington.

Also a letter from Green to Dudley enclosing \$25 to cover certain fees & balance to be kept for his (D.'s) own use. There are few others showing some light, so brought them all down, as I thought further investigation might show their usefulness, & signed a receipt for them, a carbon copy of which is in envelope with them.

Received your letter of instructions. Have written P. M. at Linden. Leave on lat train tonight for Anna, Ill., to look Hartline group & then will go to St. Paul to look up the Barratt group as directed. In connection with Hartline group you will also find a letter to R. & R. at Juneau, from H. R. Harriman, asking status, as he (or people he represents) has a contract to purchase all of said group. This contract, Dudley said, was attached to papers in first C. D. S. No. in group.

In regard to Foster & Philbrick, I saw from letter (heads) written to R. & R. at Juneau that they were promoters of townsite at American Falls, Idaho. Philbrick is also supposed to be connected with a real estate firm in Spokane, I think, Ham, Yeardeley & Ham; & Skinner is also supposed to be out there too. However, will try to locate them here again when I take up the group again later on.

As to letters from R. & R., wish you would check them over & receipt for them & take charge of them. They are arranged in bunches according to year received. There are several letters there from Green in last bunch, which it might be well to look over.

In regard to McHenry group, as well as a great many of the claims filed lately, the power of attorney was not made out until after lands were withdrawn, & I would suggest that it would be well when claimants are seen to find whether they gave more than one power of attorney, or whether they gave any verbal authority to agent to locate claims prior to withdrawal.

It would seem from some of changes made in P/A in McHenry group that there had been an attempt to fill in year as 1906 instead of 1907 & that in one or two cases the N. P. did not change same & also did not put on seal. Also in Munly group (new group) all of P/A were made out on Mar. 3, 1906, while claimants are scattered across the continent. These P/A were not acknowledged before a notary, so there is no way of checking up dates they were made by records in cases.

I did not bring down papers in new cases from Juneau, but secured dates & all data on these new cases, & from this data the papers in the cases were made out. A number of the papers in various cases were still in Washington, as they were not returned after action on appeal from R. & R.'s decision rejecting their C. D. S. filings. However, the data I secured is, I think, entirely sufficient to enable the completion of the investigation.

I have all of this data with me, but a copy of the data for each case was left in the folder. New cases were made for all of the new C. D. S. & cards for same.

You will also find a number of papers in my grip containing articles re Cunningham group hearings & one containing a supposed interview of one of the claimants that might be of interest.

Have 10 people to see in Ill. in Hartline group, & then will go to St. Paul as directed to look up Barrett group, 7 claimants.

So if you write me at once address me at St. Paul, % gen. delivery. After the 5th address me at gen. del., Detroit, Mich.

Very respectfully,

ARTHUR R. BOWMAN,
Spec. Agt., G. L. O.

(Anna Mullen (of Smith group) is daughter of P. M. Mullen.)

Mr. BRANDEIS. Also letter from Glavis to forester, September 18, 1909:

THE HOTEL LINCOLN,
Seattle, September 18, 1909.

FORESTER,

U. S. Forest Service, Washington, D. C.

SIR: I have this day transmitted copies of a great portion of the evidence relating to the Alaska coal cases within the Chugach National Forest. I believe these documents will be of assistance to your representative at the hearings which I understand will take place in the near future. The offices of the chief of field division and the General Land Office are well supplied with copies, as well as the originals of these papers.

Respectfully,

L. R. GLAVIS,
Chief of Field Division.

2104 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

Mr. BRANDEIS. Letter from Mr. Glavis to the commissioner, dated October 1, 1909:

[104002. Registered G. L. O., October 8, 1909.]

CHICAGO, ILL., October 1, 1909

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: I inclose copy of my letter to the President offering my services in the Cunningham cases. I have written to the President instead of directly to you, because I was dismissed by him and I thought you would not care to act independently in the matter. Of course, I understand that should the department desire to avail itself of my offer, my services will of necessity have to be rendered without compensation.

Respectfully,

L. R. GLAVIS

Address: Lincoln Hotel, Seattle, Wash.

Mr. BRANDEIS. Also letter from Glavis to the President, dated October 1, 1909:

[104002]

CHICAGO, October 1, 1909.

The PRESIDENT, Washington, D. C.

SIR: I understand that it is the present intention of the Government to take testimony this month in the case against Clarence Cunningham et al., involving the title to approximately 5,200 acres of coal lands in Alaska. Until very recently the investigation of all Alaska coal cases was under my supervision, and most of the evidence in the Cunningham case was secured by me personally. I am, therefore, not only thoroughly familiar with all the evidence, but have also knowledge of every detail of the case. It has been my experience in the prosecution of conspiracy cases that the most experienced and capable attorney can not possibly grasp the details and similar points in the evidence when taking charge so soon before the trials, and the details are often most essential to the proper presentation of the evidence.

I do not desire my separation from the service to interfere with bringing these cases to a successful termination, and believing that my past experience and knowledge of the entire case may be of assistance during the taking of testimony, I respectfully offer you my services to assist in any way deemed advisable in the trial of these cases.

Respectfully,

L. R. GLAVIS.

Address: Lincoln Hotel, Seattle, Wash.

Mr. BRANDEIS. I wish to introduce letter from Mr. Schwartz to Mr. Moore, October 11, 1909:

OCTOBER 11, 1909.

HON. MILES C. MOORE,
Walla Walla, Washington.

SIR: I left Washington for the West on September 17, and I now have your letter of September 16 in the matter of statements contained in Cunningham's letter to the register and receiver at Juneau, Alaska.

It has always been my opinion that Mr. Cunningham, either consciously or unconsciously, was somewhat drawing the "long bow" in order to secure more prompt action by the local land officials. No copies of reports had, of course, ever been furnished anyone outside of the government service, and, for that matter, no copies had ever been asked for by anyone outside of the government service; nor were there any copies furnished to persons in the service until Mr. Glavis was given copies of all papers in what is known as the "Cunningham cases."

You call my attention to a telegram appearing in a recent issue of the "Spokane Review of Spokane, Washington," to the effect that I had stated before the House committee in the early spring of 1908 that the Cunningham entries were "dummies," etc.

I never appeared before any House committee until sometime in February, 1909, nor has there been any charge that the Cunningham entries were "dummies." The charge is, and has been, that prior to entry there was an unlawful agreement or understanding to combine, the truth or falsity of that charge now about to be determined by a hearing in regular course.

Respectfully,

H. H. SCHWARTZ,
Chief of the Field Service

Mr. BRANDEIS. I now wish to introduce letter from the commissioner to Sheridan, dated October 16, 1909, and letter from Schwartz to Sheridan, dated October 23, 1909:

OCTOBER 16, 1909.

Mr. JAMES M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: I enclose you herewith copy of my letter of this date to the Forester in reply to his request for direction to you to furnish District Forester E. T. Allen with copy of reports of Coal Mining Engineer Kennedy and Geologist Fisher.

As soon as you shall have received the report of one Wingate you will furnish Mr. Allen copy of the report from Mr. Kennedy, excepting the large map, and as to that you will advise him that space in your office is available for any representative of the Portland forestry office who desires to report to you and copy the map in question.

The Director of the Geological Survey has this day been notified that the Forest Service desires copy of the report of Geologist Fisher; and, upon consent of the director, you will be notified to furnish the same after you shall have received Mr. Wingate's report.

Respectfully,

Commissioner.

OCTOBER 23, 1909.

Mr. JAMES M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: I have your letter of the 18th instant, advising you have found upon your desk a manila envelope containing some of the papers receipted for at Juneau by Mr. Bowman, and that 22 designated letters are missing from the package.

Chief of Field Division Colter has been directed to write to you the substance of Mr. Bowman's statement to him in reference to this package. My recollection is not clear, but it is that Bowman stated to Colter that he (Bowman) had left these letters in a sealed envelope in his suit-case, but whether the suit-case was left in the office or Bowman's hotel, I do not recall.

Bowman stated to Colter (last week) that he presumed the papers were still in his grip, but indicated the hope that Colter would not advise Christensen, as he did not wish Christensen to go through his suit-case.

Take this matter up with Mr. Christensen and endeavor to ascertain just what became of these papers. Put Spaulding and Shartell through the third degree, and give Bowman the same dose—only a little more. You can put it up to Bowman flat that he is responsible for the papers. When you find out who abstracted the papers and who has them, or find who surreptitiously returned the envelope containing only a part of them, submit a complete report to this office, and proper action will be taken for criminal prosecution against the parties involved, unless in your opinion they should not be proceeded against. It is especially desirable that you find these papers before the conclusion of the Cunningham trial, for they may contain that which will aid the Government in cancelling the entries. It would be entirely in keeping with other recent attitude for Mr. Glavis or some of his particular Forest Service friends to hold out any material matter in the hopes that the Government will be unable to succeed, and thereby give them an opportunity to further publicly damn the General Land Office.

Respectfully,

H. H. SCHWARTZ, *Chief of Field Service.*

Mr. BRANDEIS. Also letter from Sheridan to Schwartz, October 27, 1909:

[Sheridan transmits copy of letter to Glavis and copy of interrogatories.—Special.]

SEATTLE, WASHINGTON, October 27, 1909.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: Please find enclosed herewith copy of a letter dictated Seattle, Washington, October 25, 1909, addressed by me to Mr. L. R. Glavis, Lincoln Hotel, Seattle, Washington, requesting an interview with him for the purpose of determining whether or not it would be necessary to have him testify in the Cunningham coal case investigation. This letter was delivered to Mr. Glavis in person by Mr. C. A. Kirstein, of this office, at the Lincoln Hotel, Seattle, Washington, on the night of October 25,

1909, in the presence of Mr. Andrew Kennedy of this office. Mr. Kirstein was introduced to Mr. Glavis by Mr. Kennedy, whereupon Mr. Kirstein delivered this letter into Mr. Glavis' hands.

Attached to this letter you will find a list of interrogatories which we propose to have Mr. Glavis answer, in his own handwriting, when he appears at this office in response to this letter. In this way we shall be able to determine whether Mr. Glavis has in his possession any material relevant and competent records or facts which would make it necessary or advisable to call him to testify as a witness for the Government in this investigation.

Of course, Mr. Glavis knows nothing of these interrogatories, nor shall he learn anything of them until he appears in person at this office.

Very respectfully,

JAMES M. SHERIDAN,
Special Agent, G. L. O.

Mr. BRANDEIS. I now introduce letter from Mr. Schwartz to Mr. Sheridan, dated October 29, 1909:

P-HHS.

WASHINGTON, D. C., October 29, 1909

MR. JAMES M. SHERIDAN,
Special Agent in charge, Seattle, Washington.

SIR: You will recall that some time in January, 1907, Clarence Cunningham addressed a letter to the register and receiver at Juneau, Alaska, and therein falsely stated that the Commissioner of the General Land Office had supplied Cunningham or his people, with copies of reports made by special agents and the telegrams passing between such agents, adding that such reports were favorable.

The facts were that some three weeks before ex-Governor Miles C. Moore, of the State of Washington, called at the General Land Office to inquire for the status of the Cunningham cases; and he was verbally advised by the commissioner—after the commissioner had informed himself—that the special agent having the investigation of these cases in charge had submitted a favorable report, and that the cases would proceed to the mineral division for adjudication and patent.

Mr. Moore a few days later called on the mineral division to make inquiry in reference to the status of these claims, and there ascertained either that some of the plat of survey had not been received or that they had been received in such damaged condition as not to warrant their use.

Mr. Moore advised me in letter of September 16, 1909, that he was at that time informed by someone in authority—he presumes it was the chief clerk—that such a condition existed, and that he was shown copy of a telegram sent to the register and receiver at Juneau, or a letter from the register and receiver at Juneau to this office in relation to these plats, all of which action above detailed was, of course, entirely proper.

However, I am sending you herewith the original letter from Mr. Moore to me of date September 16, 1909, together with copy of my reply of October 11, 1909. My absence in the field prevented an earlier reply to Mr. Moore.

In the event that opportunity presents itself, I wish you would inquire of Cunningham, if you get him on the stand, as to his authority for making the statements contained in his letter to the register and receiver.

I believe that Mr. Moore was the only person in Washington at or any time shortly prior to the date of Mr. Cunningham's letter; and if Cunningham does not repudiate his letter in a manner satisfactory to you, you should make further inquiry upon the subject from Miles C. Moore when you get him on the stand.

Of course Cunningham will be apprehensive that, in repudiating his letter and telling the truth on the stand in reference to that letter, he may thereby discredit himself generally and in that way damage the defendants' cases.

This you must have in mind when you take up the matter with him.

I am anxious to get the truth in reference to this matter into the record, and it will be necessary for you, as much as possible, to disassociate from Cunningham's mind the effect his testimony on this point—if he shows his letter false—may have upon his testimony generally; that is, upon his creditability.

I leave it all to your good judgment.

Respectfully,

H. H. SCHWARTZ,
Chief of Field Service

Mr. BRANDEIS. I now introduce memorandum of Sheridan, dated November 22, 1909.

MEMORANDUM.

SEATTLE, WASH., November 22, 1909.

To-day at noon, just after the adjournment had been taken in the Cunningham case, a gentleman approached me in the federal building, while I was coming down from the third floor to the second to go to my office, and taking a letter out of his pocketbook, handed it to me stating that as everybody else seemed to have this letter or know of it, he thought it might be of interest to me to have it. I asked him for his name and he said that he was F. F. Evans, formerly of Katalla, Alaska, and now secretary of the Midas Mining Company (Limited), of Idaho. I asked him to come in and give me some information concerning this letter. The letter itself is written by Franklin K. Lane, one of the Commissioners of the Interstate Commerce Commission, and bears date Washington, D. C., June 27, 1908, and is addressed to F. F. Evans, esq., Katalla, Alaska, in re Evans's letter of May 9th, of the same year, addressed to President Roosevelt, concerning the alleged tactics pursued by the so-called Morgan-Guggenheim crowd in Alaska in order to block the building of railroads and the development of coal claims.

Mr. Evans stated that about the first of March, 1908, he was present at a meeting held at the chamber of commerce in Seattle, Washington, at which were present also John H. McGraw, representing the Cunninghams, John Schram, representing the Alaska Petroleum Co., H. R. Harriman, representing the same company, and R. A. Ballinger, who was then Commissioner of the General Land Office. Mr. Evans stated that he was personally representing the Alaska Development Company. He said the purpose of this meeting was to put through Congress what was known as the "Cale bill," also known as the "department bill." He said that Mr. Ballinger had been invited to be present for the reason that they believed that he was the man to be seen with a view to getting such legislation through, and that while Mr. Ballinger did not say much at the meeting, he did dictate a telegram to Secretary Garfield requesting that Garfield do all in his power to have this bill passed. Mr. Evans then said that he was greatly surprised that Mr. Ballinger had recently denied that he was present at this meeting. He said that he is willing to sign an affidavit to the effect that he was present, and he agreed to do so and to give me this affidavit later.

Here Evans remarked that he had heard, over in Idaho, that the letter which he had written to President Roosevelt, dated May 9, 1908, concerning the Morgan-Guggenheim crowd, already herein referred to, was to be introduced in evidence by the Government, and that his reason for giving me the letter from Commissioner Lane, already herein referred to, was that I might understand the true situation. He seemed apprehensive of some personal consequence to himself if this letter should be introduced in evidence, and he wanted to be allowed to have something to say in connection with the statements therein contained.

He said it was his understanding that Mr. H. R. Harriman, of Seattle, had invited Mr. Ballinger to be present at the meeting referred to. He added, furthermore, that Harriman had told him, one day when he had met him here in Seattle, that he was on his way to meet Mr. Ballinger to discuss the Alaskan interests, but that this was subsequent to Mr. Ballinger's resignation from office as Commissioner of the General Land Office and before his acceptance of the office of Secretary of the Interior.

Mr. Evans also remarked that he did not know where I stood on this Alaskan situation, but that he felt that it was a great shame to have Mr. Glavis punished in this way when he was honestly trying to protect the interests of the Government.

I asked Mr. Evans what he was doing at present and he said that he was the secretary of the Midas Mining Company (Ltd.), of Pierce, Idaho, and that for about fifteen years past he had been a special representative for H. H. Rogers in the United States and in Alaska in connection with the Standard Oil interests, but that he had severed his connection with those interests about a year ago for the reason that "they wanted him to branch out generally, but that he was not willing to do this. He was perfectly willing to work for Mr. Rogers, but not for the rest."

He would not get any more definite on the subject than this.

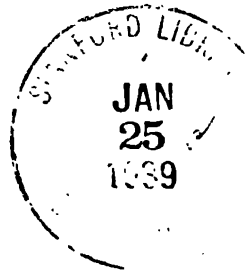
He added, furthermore, that resolutions were passed at another meeting held at Seattle, Washington, in March or April, 1908, which resolutions had been offered by C. J. Smith, one of the entrymen in the Cunningham group, and which were to be presented to Congress for the purpose of urging legislation in Alaska. Mr. Evans thought that C. J. Smith and H. C. Henry, two of the entrymen in the Cunningham group were representing John H. McGraw, and were not in reality holding claims in the Cunningham group for themselves personally.

I impressed upon Mr. Evans the fact that the Government could take no action on rumors or hearsay; that if he wished anything to be done about any such matter as that reported by him he must set out facts which would justify us in placing the matter of record. I then urged him to prepare an affidavit setting out all that he knew in this connection. He answered saying that most of the facts that he had set out in his letter to President Roosevelt, dated May, 1908, were based on information given him while sitting around in a saloon in Alaska with a broken ankle and that he could not vouch for the truth of the facts himself.

Taken altogether, Mr. Evans's conduct was that of a man who felt that he was about to get into trouble and wished to do something toward heading it off without disclosing fully what his own position was in connection with Alaskan affairs. He admitted that he held stock in the Alaska Petroleum and Coal Company, and that Mr. Harriman, also, is interested in this company. His remarks, however, and his manner led me to believe that there is no friendly feeling on his part for Mr. Harriman.

The CHAIRMAN. The committee will now stand adjourned until next Friday morning at 10 o'clock.

(Accordingly at 4.45 p. m., the committee adjourned until Friday, March 25, 1910, at 10 o'clock a. m.)



NO. 23

**HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

MARCH 25, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California.

GEORGE SUTHERLAND, Utah.

ELIHU ROOT, New York.

WILLIAM E. PURCELL, North Dakota.

DUNCAN U. FLETCHER, Florida.

MARLIN E. OLMSTED, Pennsylvania.

EDWIN DENBY, Michigan.

E. H. MADISON, Kansas.

OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, Secretary.

Mr. BRANDEIS. I now introduce memorandum of Sheridan, dated November 22, 1909.

MEMORANDUM.

SEATTLE, WASH., November 22, 1909.

To-day at noon, just after the adjournment had been taken in the Cunningham case, a gentleman approached me in the federal building, while I was coming down from the third floor to the second to go to my office, and taking a letter out of his pocketbook, handed it to me stating that as everybody else seemed to have this letter or know of it, he thought it might be of interest to me to have it. I asked him for his name and he said that he was F. F. Evans, formerly of Katalla, Alaska, and now secretary of the Midas Mining Company (Limited), of Idaho. I asked him to come in and give me some information concerning this letter. The letter itself is written by Franklin K. Lane, one of the Commissioners of the Interstate Commerce Commission, and bears date Washington, D. C., June 27, 1908, and is addressed to F. F. Evans, esq., Katalla, Alaska, in re Evans's letter of May 9th, of the same year, addressed to President Roosevelt, concerning the alleged tactics pursued by the so-called Morgan-Guggenheim crowd in Alaska in order to block the building of railroads and the development of coal claims.

Mr. Evans stated that about the first of March, 1908, he was present at a meeting held at the chamber of commerce in Seattle, Washington, at which were present also John H. McGraw, representing the Cunninghams, John Schram, representing the Alaska Petroleum Co., H. R. Harriman, representing the same company, and R. A. Ballinger, who was then Commissioner of the General Land Office. Mr. Evans stated that he was personally representing the Alaska Development Company. He said the purpose of this meeting was to put through Congress what was known as the "Cale bill," also known as the "department bill." He said that Mr. Ballinger had been invited to be present for the reason that they believed that he was the man to be seen with a view to getting such legislation through, and that while Mr. Ballinger did not say much at the meeting, he did dictate a telegram to Secretary Garfield requesting that Garfield do all in his power to have this bill passed. Mr. Evans then added that he was greatly surprised that Mr. Ballinger had recently denied that he was present at this meeting. He said that he is willing to sign an affidavit to the effect that he was present, and he agreed to do so and to give me this affidavit later.

Here Evans remarked that he had heard, over in Idaho, that the letter which he had written to President Roosevelt, dated May 9, 1908, concerning the Morgan-Guggenheim crowd, already herein referred to, was to be introduced in evidence by the Government, and that his reason for giving me the letter from Commissioner Lane, already herein referred to, was that I might understand the true situation. He seemed apprehensive of some personal consequence to himself if this letter should be introduced in evidence, and he wanted to be allowed to have something to say in connection with the statements therein contained.

He said it was his understanding that Mr. H. R. Harriman, of Seattle, had invited Mr. Ballinger to be present at the meeting referred to. He added, furthermore, that Harriman had told him, one day when he had met him here in Seattle, that he was on his way to meet Mr. Ballinger to discuss the Alaskan interests, but that this was subsequent to Mr. Ballinger's resignation from office as Commissioner of the General Land Office and before his acceptance of the office of Secretary of the Interior.

Mr. Evans also remarked that he did not know where I stood on this Alaskan situation, but that he felt that it was a great shame to have Mr. Glavis punished in this way when he was honestly trying to protect the interests of the Government.

I asked Mr. Evans what he was doing at present and he said that he was the secretary of the Midas Mining Company (Ltd.), of Pierce, Idaho, and that for about fifteen years past he had been a special representative for H. H. Rogers in the United States and in Alaska in connection with the Standard Oil interests, but that he had severed his connection with those interests about a year ago for the reason that "they wanted him to branch out generally, but that he was not willing to do this. He was perfectly willing to work for Mr. Rogers, but not for the rest."

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Taken altogether, Mr. Evans's conduct was that of a man who felt that he was about to get into trouble and wished to do something toward heading it off without disclosing fully what his own position was in connection with Alaskan affairs. He admitted that he held stock in the Alaska Petroleum and Coal Company, and that Mr. Harriman, also, is interested in this company. His remarks, however, and his manner led me to believe that there is no friendly feeling on his part for Mr. Harriman.

The CHAIRMAN. The committee will now stand adjourned until next Friday morning at 10 o'clock.

(Accordingly at 4.45 p. m., the committee adjourned until Friday, March 25, 1910, at 10 o'clock a. m.)

FRIDAY, MARCH 25, 1910.

JOINT COMMITTEE TO INVESTIGATE THE INTERIOR DEPARTMENT AND FORESTRY SERVICE, *Washington, D. C., March 25, 1910.*

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10 a. m.

There were present as counsel: Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; Mr. John J. Vertrees and Carl Rasch, representing Secretary Ballinger.

The CHAIRMAN. The committee will please come to order. Mr. Brandeis, are you ready to proceed?

Mr. BRANDEIS. Before calling Messrs. Birch and Steele, who are here to-day, I wish, in reference to the documents which I put in at the close of the last session, to call attention to the fact, which should appear, that such of the papers as are contained in pages 2048 and 2066 C accompanied Secretary Ballinger's letter of March 12, which is on page 1932, and the letter of March 17, which is on page 1934. The papers which appear on page 2066, beginning with C on that page, to page 2076, accompanied the letter of the Attorney-General of March 16, 1910, which appeared at page 1933 of the testimony. I would like also to appear at this place in the testimony the supplemental call on the Secretary and other members of the Interior Department which was made under date of March 21, and I understand transmitted to the Secretary by the committee on March 22, and also the supplemental call on the Attorney-General, also dated March 21, which I understand was sent by mail on the afternoon of the 22d, by the committee to the Attorney-General. Am I right in supposing Mr. Sleman, that no replies have come?

The CHAIRMAN. There is a reply from the Attorney-General this morning. There is not yet a reply from the Secretary, but the reply from the Attorney-General came about an hour ago.

Mr. BRANDEIS. I will ask, then, that this reply of the Attorney-General be inserted at this point.

(The papers referred to are as follows:)

161 DEVONSHIRE STREET,
Boston, Mass., March 21, 1910.

JOH. KNUTE NELSON,
*Chairman Joint Investigating Committee,
Senate Chamber, Washington, D. C.*

DEAR SIR: Referring to my call for documents dated March 5, 1910 (testimony, page 1513), transmitted by you to Secretary Ballinger under date of March 7th, his reply thereto dated March 12th, 1910 (testimony, page 1931), my further letter to you of March 12, 1910 (testimony, page 1932), transmitted by you to Secretary Ballinger under date of March 14, 1910, and his reply thereto, dated March 17, 1910 (testimony, page 1934), and the papers transmitted to your committee with said letters of Secretary Ballinger, all of which were put in evidence by me at the close of the hearing March 19, 1910, I desire to call to your attention that it is not clear that all papers intended to be called for have been transmitted, and, therefore, to avoid the possibility of misunderstanding, I respectfully request as follows:

First. That Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, Carr, Murphy, and McEniry, and each of them, be requested to produce to this committee originals and so far as originals are not available, copies) of all letters, telegrams, memoranda, and papers, whether official or personal, relating to the Cunningham claims, or the so-called Glavis charges, sent or received by any of them, respectively, or made, dictated, or prepared by them, or any of them, respectively, in whole or in part, prior to September 20, 1909, and which are not contained in Senate Document No. 248 already produced by them to your committee in pursuance of previous calls, meaning to include, among others, all papers or memoranda submitted by them, or any of them, to, or prepared by them, or any of them, in whole or in part for the President, his private secretary, or other assistant, or the Attorney-General or any assistant, and all communications received from the President, his secretary, or any assistant, or the Attorney-General or any assistant.

Second. That Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, Carr, Murphy, and McEniry, and each of them, be requested to make written reply whether in addition to the documents produced they have knowledge of any other such letters, telegrams, papers, or memoranda not now available for production, and if so what such other documents are.

I have made this specific request for the following, among other, reasons:

1. No written reply whatever has come directly from Mr. Lawler to my calls of March 5, 1910, and March 12, 1910, and Secretary Ballinger in his letter of March 17, 1910 (testimony, page 1934), says merely that "Mr. Lawler states" that the letter of August 15, 1909, therein referred to "is the only correspondence in his possession coming within the provisions of your request." The call was not limited to "correspondence," but included telegrams, memoranda, and any other papers, nor was it limited to papers in Mr. Lawler's personal possession.

2. The reply of Mr. Finney of March 14, 1910 (testimony, 1934), is likewise so limited as not to include:

- (a) Any papers received, sent, or made between September 3 and September 20.
- (b) As not to include papers or memoranda dictated, prepared, or made in whole or in part, but not addressed to or received from Messrs. Ballinger, Pierce, Lawler, Schwartz, or Carr.
- (c) As not to include papers submitted to or received from the President or the Attorney-General or any assistant or either of them.

3. The reply of Mr. Pierce of March 16, 1910 (testimony, page 1934), is limited so as to exclude all papers, memoranda, or telegrams except correspondence between himself and Messrs. Ballinger, Dennett, Schwartz, Finney, and Carr.

4. Mr. Carr's reply of March 15, 1910 (testimony, page 1935), appears also to be limited so as to exclude all papers, memoranda, or telegrams except correspondence between himself and Messrs. Ballinger, Dennett, Schwartz, Finney, and Carr.

5. The letters of Secretary Ballinger of March 12, 1910, and March 17, 1910, are perhaps also so limited as to exclude papers and memoranda not coming within the designation of "correspondence."

6. I desire also to call your attention to the fact that the papers and correspondence from Mr. McEniry, promised in Secretary Ballinger's letter of March 12, 1910, had not been received up to the close of the hearing on March 19, 1910.

Yours, very truly,

LOUIS D. BRANDEIS.

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161 DEVONSHIRE STREET,
Boston, Mass., March 21, 1910.

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee,
Senate Chamber, Washington, D. C.*

MY DEAR SIR: Supplementing my request of March 15, 1910, for production of papers by the Attorney-General (testimony, page 1932) and his reply thereto under date of March 16, 1910 (testimony, page 1933), I respectfully request that the Attorney-General be asked to produce to your committee any letters, telegrams, or memoranda or papers relating to the Cunningham claims, or the so-called Glavis charges (other than those contained in Senate Document No. 248, or already transmitted with the Attorney-General's said letter of March 16, 1910), which were written, dictated, or made prior to September 20, 1909, and sent or submitted by him to the President, his private secretary, or other assistant, or which were received by the Attorney-General or any assistant from the President, private secretary, or assistant, or any other person.

Yours, very truly,

LOUIS D. BRANDEIS.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY-GENERAL,
Washington, D. C., March 23, 1910.

HON. KNUTE NELSON,
*Chairman Joint Committee of Congress to Investigate the Interior
Department and Forestry Bureau, United States Senate.*

MY DEAR SENATOR: I have yours of 22d instant, inclosing copy of a letter addressed to you by Louis D. Brandeis, esq., attorney for Louis R. Glavis, requesting the production to your committee of "any letters, telegrams, or memoranda or papers relating to the Cunningham claims, or the so-called Glavis charges (other than those contained in Senate Document No. 248, or already transmitted with the Attorney-General's said letter of March 16, 1910), which were written, dictated, or made prior to September 20, 1909, and sent or submitted by him to the President, his private secretary or other assistant, or which were received by the Attorney-General or any assistant from the President, private secretary or assistant, or any other person."

The only papers that I can find in this department which could come within this description other than those transmitted to you with my letter of March 16, 1910, are copies of communications submitted to me by the President, the originals of which have been already transmitted by him to you, and which, therefore, must be in the hands of your committee.

Faithfully, yours,

GEO. W. WICKERSHAM,
Attorney-General.

(The following communications and inclosures were received from the Secretary of the Interior later in the day, and by direction of the committee are inserted in the record at this point:)

[The Secretary of the Interior.]

WASHINGTON, March 24, 1910.

SIR: Complying with your request of the 23rd instant there is forwarded herewith copy of the telegram of May 28, 1908, from Commissioner Dennett to Special Agent Glavis at Portland, Oregon. The original telegram, it is presumed, is on file in the office of the chief of field division at Portland, Oregon, and will be called for if desired.

Very respectfully,

R. A. BALLINGER,
Secretary.

HON. KNUTE NELSON,
Chairman Joint Investigating Committee, United States Senate.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2111

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 28, 1908.

[Telegram.]

Special Agent L. R. GLAVIS,
Portland, Oreg.

Persite babir lemamacaf released. Bill signed carrying migmultmura for field work, half immediately available. Limitation of office letter Laprimafno revoked. Push work.

DENNETT, Commissioner.

[Translation.]

Secretary of Interior letter May 12 released. Bill signed carrying \$500,000 for field work, half immediately available. Limitation of office letter April 28 revoked. Push work.

THE SECRETARY OF THE INTERIOR,
Washington, March 25, 1910.

SIR: Replying to your letter of March 22, enclosing a copy of a communication from Mr. Brandeis, dated March 21, I have to say that copies of the letter of Mr. Brandeis were furnished to all of the persons named therein connected with this department, and I send herewith the replies of Messrs. Pierce, Lawler, Dennett, Finney, Carr, and Murphy. Those of Messrs. Schwartz and McEniry will be forwarded when received.

I also transmit copies and originals of letters and telegrams furnished by Chief of Field Division McEniry, in compliance with your request of March 8.

With respect to any memoranda, letters, telegrams, data, etc., in the files of the department, or elsewhere, I beg to invite your attention to my communication of March 12. I am informed that further search has failed to disclose any documents coming within the purview of your requests which have not already been furnished.

In further compliance with paragraph 10 of the request of January 27, 1910 (page 319 of the testimony), I submit herewith original letter of October 13, 1908, from Clarence Cunningham to the register and receiver, Juneau, Alaska, forwarded by Register Walker of the Juneau office March 11, 1910.

Very respectfully,

R. A. BALLINGER,
Secretary.

HON. KNUTE NELSON,
Chairman Joint Committee of Investigation,
Room 210, Senate Office Building.

DEPARTMENT OF THE INTERIOR,
OFFICE OF FIRST ASSISTANT SECRETARY,
Washington, March 23, 1910.

MR. SECRETARY: In response to the call of Mr. Louis D. Brandeis, of March 21, 1910, I have to answer that I do not know of any papers, memoranda, telegrams, or correspondence of any kind with anybody, with relation to the Cunningham coal entries or the Glavis charges, which have not already been furnished to the committee. I have already furnished all that I have in my private files.

FRANK PIERCE,
First Assistant Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, March 23, 1910.

HON. KNUTE NELSON,
Chairman Joint Investigating Committee,
United States Senate.

MY DEAR SENATOR: The Secretary has handed me copy of communication to yourself, signed by Mr. Louis B. Brandeis, in which reference is made to certain calls submitted by the latter for documentary matter in the possession of various persons, including myself, to which calls Mr. Brandeis complains in-ufficient response has

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been made. Upon my attention being directed to such calls, all matter in my personal or official possession coming within the purview thereof was turned over to Mr. Carr, private secretary to Secretary Ballinger, and transmitted as requested.

Very respectfully,

OSCAR LAWLER,
Assistant Attorney-General.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 25, 1910.

HON. SECRETARY OF THE INTERIOR.

SIR: I am in receipt of a letter dated March 21, 1910, from Attorney Louis D. Brandeis, addressed to Hon. Knute Nelson, chairman Joint Investigating Committee, requesting as follows:

"First. That Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, Carr, Murphy, and McEniry, and each of them, be requested to produce to this committee originals (and, so far as originals are not available, copies) of all letters, telegrams, memoranda, and papers, whether official or personal, relating to the Cunningham claims or the so-called Glavis charges sent or received by any of them, respectively, or made, dictated, or prepared by them or any of them, respectively, in whole or in part, prior to September 20, 1909, and which are not contained in Senate Document No. 248, or already produced by them to your committee in pursuance of previous calls, meaning to include, among others, all papers or memoranda submitted by them or any of them to, or prepared by them or any of them in whole or in part for the President, his private secretary or other assistant, or the Attorney-General or any assistant, and all communications received from the President, his secretary or any assistant, or the Attorney-General or any assistant.

"Second. That Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, Carr, Murphy, and McEniry, and each of them, be requested to make written reply whether in addition to the documents produced they have knowledge of any other such letters, telegrams, papers, or memoranda not now available for production; and if so, what such other documents are."

In reply I have to advise you that all the letters, telegrams, etc., from myself to either of said persons named therein, or from either of said persons to myself, relating to the Cunningham claims or the so-called Glavis charges, made or dictated prior to September 20, 1909, and not contained in Senate Document 248, I have been able to find have been forwarded to the joint committee, and I have no recollection of the contents of any other letters, telegrams, etc., if any such there may have been, that are not now available for production.

Very respectfully,

FRED DENNETT, *Commissioner*

DEPARTMENT OF THE INTERIOR,
Washington, March 22, 1910

THE SECRETARY: Referring to the request of the chairman of the joint committee, at instance of Mr. Brandeis, March 5, 1910, for the production of "originals (and, so far as originals are not available, copies) of all other letters, telegrams, and memoranda, and papers of, from, or to, or made by Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, or Carr, dated, written, or made prior to September 20, 1909, not contained in Senate Document 248, relating to the Cunningham claims or the so-called Glavis charges, including, among others, all papers or memoranda submitted by them or any of them to the President or to the Attorney-General," and to Mr. Brandeis's communication of March 21, averring that my answer to the committee of March 14, 1910, does not cover fully the request made by him, I have the honor to state that I have not in my possession originals or copies, nor can I find on file any originals or copies of any such letters, telegrams, memoranda, or papers, of, from, or to, or made by me, addressed to the persons named in said letter of March 5, or by any of them addressed to me.

Very respectfully,

E. C. FINNEY,
Assistant to the Secretary.

HON. R. A. BALLINGER,
Secretary of the Interior.

THE SECRETARY OF THE INTERIOR,
Washington, March 24, 1910.

SIR: I have received a copy of the letter of Mr. Brandeis of March 21, 1910, in which it is stated:

"Mr. Carr's reply of March 15, 1910 (testimony, p. 1935), appears also to be limited so as to exclude all papers, memoranda, or telegrams except correspondence between himself and Messrs. Ballinger, Dennett, Schwartz, Finney, and Carr."

In reply I beg to state that my letter of March 15 was intended to be in full compliance with the requests of March 5 and 12 of Mr. Brandeis, and was meant to include all correspondence, memoranda, telegrams, etc., which I received from or addressed to any or all of the persons mentioned in said requests, which likewise includes all other persons mentioned in paragraph 1 of letter of March 21.

Very respectfully,

DON M. CARR, *Private Secretary.*

HON. R. A. BALLINGER,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 23, 1910.

HON. SECRETARY OF THE INTERIOR:

SIR: Referring to communication dated March 21, 1910, from Louis D. Brandeis, addressed to the Hon. Knute Nelson, chairman, joint investigating committee, Senate Chamber, Washington, D. C., relative to the request of the joint committee of Congress investigating the Interior Department and the Forest Service for certain records, wherein the following requests are made:

"First: That Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, Carr, Murphy, and McEniry, and each of them be requested to produce to this committee originals (and so far as originals are not available, copies) of all letters, telegrams, memoranda and papers, whether official or personal, relating to the Cunningham claims or the so-called Glavis charges sent or received by any of them, respectively, or made, dictated, or prepared by them or any of them, respectively, in whole or in part, prior to September 20, 1909, and which are not contained in Senate Document No. 248, or already produced by them to your committee in pursuance of previous calls, meaning to include, among others, all papers or memoranda submitted by them or any of them to, or prepared by them or any of them in whole or in part for the President, his private secretary, or other assistant, or the Attorney-General or any assistant, and all communications received from the President, his secretary, or any assistant, or the Attorney-General or any assistant.

"Second: That Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, Carr, Murphy, and McEniry, and each of them be requested to make written reply whether in addition to the documents produced they have knowledge of any other such letters, telegrams, papers, or memoranda not now available for production, and if so, what such other documents are."

I have to advise you in reference to the above-quoted paragraphs, that I have neither original nor copies of any letter, telegram, memorandum, etc., to myself, or from myself to either of said persons named therein relative to the Cunningham coal claims, or the so-called Glavis charges, nor have I any knowledge of the existence of any such letters, telegrams, papers, or memoranda, which are not contained in Senate Document No. 248, or already placed before the committee.

Very respectfully,

JOHN T. MURPHY,
Law Examiner, G. L. O.

712-14 E. & C. BLDG.,
Denver, Colo., March 12, 1910.

HONORABLE COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: By letter dated March 9, 1910, from the Assistant Chief of Field Service, I am directed, under the call of the joint committee investigating the Forest Service and our department, to forward any letters, papers, etc., relating to the Cunningham coal claims, to you.

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I have carefully looked through my official and personal letter files, and herewith transmit a number of letters addressed to me and copies of letters that I have written in which the so-called Glavis charges or the Cunningham entries are among the subjects discussed.

Very respectfully,

M. D. McENERY,
Chief, Field Division

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 5, 1909.

Mr. M. D. McENERY,
Chief of Field Division, Denver, Colo.

SIR: Since writing you last night, I am in receipt of your further letter in reference to the return of Mr. Sheridan, and what he has to advise you in reference to the Cunningham case. Mr. Sheridan will, of course, return to Seattle and try these cases—there is no question about that if he is still in the service.

I agree with Mr. Glavis that the claims are fraudulent, and should be, and will be, canceled. Further than that I do not agree with Mr. Glavis. His ideas in reference to the commissioner and Secretary in these matters are entirely erroneous. I do not believe that any person is better acquainted both officially and personally with the Secretary and the commissioner in so far as the Cunningham coal cases are concerned than I myself; and I know that they are both moved with the single purpose to have these cases properly and speedily investigated, and the rights of the Government and of the claimants finally and definitely determined. I know that the whole machinery of the Government has been at the service of myself; and, through me, the service of Mr. Glavis, to investigate these cases. Any idea that Mr. Glavis has that either the Secretary or the commissioner is desirous of protecting, or is even friendly to, Cunningham, or the people whom he represents, is all "poppycock." Mr. Glavis is suffering from a case of self-poisoning. He is a most energetic young man, but lacks the ability to reason with himself and against himself, with the inevitable result that once started on an erroneous theory, or line of action, he is unable to get away from it. Mr. Glavis's statement that the Secretary has "treated him coolly, and merely passed the time of day when meeting him in Seattle recently," is amusing to say the least. Ballinger is a plain, blunt man, and without pretense; and, naturally being an intelligent man, he could not extend the glad hand of fellowship, and take to his heart one whom he must necessarily know is suspicious of him, and one whom he must know believes that he is not entirely honorable in all things. My only surprise is the restraint exhibited by both the Secretary and the commissioner under all the circumstances of the case. Of course it may be a matter of necessary politics, considering the vicious and underhanded fight that is being made on Ballinger, that they shall stand indignity and insult from one of their own insubordinates, because these happen to be Alaska cases.

Glavis has been patted on the back by Pinchot and Shaw, and led astray by the Lincoln Steffens brand of muck-rakers; and these things come to him after a schooling of a year or two at Portland, Oregon (where the finger of suspicion is pointed by each man to his neighbor), with the result that he has worked himself into a mental state that I wouldn't have for a fortune.

I am writing you, not for the purpose of disabusing your mind, for I know quite well that no one will be able to charge up in your understanding a feeling that either the commissioner or Secretary would give favor to any particular individual or set of individuals; but my purpose in making this letter as specific as I do is, that you may give Mr. Sheridan the proper understanding of what my view in the premises is, and what I know from my thorough acquaintance with all the facts in the case. I expect Sheridan to try these cases, and I don't want him to "get his eye off the gun," and go off on a tangent, such as might be indicated by the apparent mental attitude of Mr. Glavis.

By the way, I am advised that this morning the acting secretary signed the letter prepared in this office, and addressed to the Attorney-General, requesting him to institute suit to recover money value of the lands heretofore fraudulently acquired by the interests which are now the Smelter Trust in Colorado.

Respectfully,

H. H. SCHWARTZ

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2115

712-14 E. & C. BLDG.,
Denver, Colo., July 6, 1909.

Mr. H. H. SCHWARTZ,
Chief of Field Service, General Land Office, Washington, D. C.

SIR: Referring to your letter of July 1, 1909, to which is attached copy of an opinion of the honorable Attorney-General on the coal land laws as applied to Alaska, and in which you advise that you have been considering Special Agent James M. Sheridan as an attorney competent to sit in cases and assist Chief of Field Division Glavis in conducting several hearings involving coal entries in Alaska.

I have taken the matter up with Mr. Sheridan and turned your letter of the 1st over to him, instructing him to hold himself in readiness to proceed to Seattle to meet Mr. Glavis upon receipt of further instructions. At the present time, in conjunction with Special Agent Smith, Mr. Sheridan is at work on two coal conspiracy cases in the Pueblo land district. It is quite likely they will finish collecting this evidence, or at least have it in such shape, by the 15th of this month, that Mr. Sheridan will be ready to start at a day's notice any time after that date.

Special Agent Sheridan has had much experience during the past year in conducting hearings involving coal lands in the Pueblo district. His handling of these cases shows that he is well grounded in law and has a bright and active mind. I believe he will make a most excellent man for Mr. Glavis in handling these matters.

Please advise the probable date you will want Mr. Sheridan detailed for this work.
Very respectfully,

Chief Field Division.

712-14 E. & C. BUILDING,
Denver, Colo., August 31, 1909.

Mr. H. H. SCHWARTZ,
Washington, D. C.

MY DEAR HARRY: Sheridan telegraphed me yesterday for a little money, advising that he had to proceed to Washington immediately, and of course I helped him out by telegraphing it to him at once, as he requested.

When he gets there he will probably put up to you pretty strongly that he will want some assistants up there that he can trust, and will unquestionably ask you to detail Special Agent Smith and perhaps Mineral Inspector Hibbard as these assistants. I want to help out in this matter all I can, but I hope it will not be necessary for you to detail Smith or Hibbard to this work. Smith is making a good investigator, and is the only man I can rely on now to carry on the work in the Pueblo land district. Hibbard, of course, is fine on coal work in that district; he knows those coal fields by heart, and he would learn the Alaskan fields in time, but it would be new work to him and would mean a lot of studying. I don't want to lose either of these men out of the Pueblo district if it can be avoided; and am putting in a word thus early, in order that if Sheridan when he gets to Washington insists on having them, you can advise him that they can not be spared from here, and give him some other assistants equally good. Murphy, of Baker's division, is a cracker jack on getting evidence, I understand.

Imagine you are working night and day on this unfortunate Alaskan affair. It looks to me as though Pinchot and his particular following in the departments in Washington would have to go. I sincerely hope that when Mr. Ballinger gets to Washington and to Beverly affairs will be settled to his satisfaction.

Sheridan writes me that he has some great dope from Myron K. Rogers, whom you telegraphed him to see.

Am not going to ask you to write, because I know that when you get the time you will do so and tell me all about it.

Sincerely yours,

M. D. McENIRY.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 6, 1909.

Mr. M. D. McENIRY,
Chief of Field Division, Denver, Colo.

MY DEAR McENIRY: I received your very interesting letter of several days ago, but to this time have been unable to reply.

I have just completed the record in reference to the Alaska cases, and Judge Ballinger left last night for Beverly to present the matter to the President.

2116 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

There was, and is, of course, nothing irregular in any of the Alaska cases or in any other cases. Glavis seems to have been nursing delusions against the integrity of the Secretary and the commissioner, and having gone to Spokane, fell into the hands of newspaper muck-rakers and Mr. Pinchot, with the result that I believe he will be summarily removed from the government service.

In his attack upon Ballinger and Dennett he necessarily involved me—or rather certain other government officials, who prepared his statement for him, involved me. Glavis, of course, had no such intention, as is evidenced from the fact that, after all action had been taken by this office, including myself, in placing Sheridan in charge of the cases, Mr. Glavis wrote me a personal letter and expressed conviction that Mr. Dennett would lose the commissionership, and that he (Glavis) thought I could become commissioner if I would go after it. Needless to say, that letter has also been presented to the President.

Respectfully,

H. H. SCHWARTZ

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
712-14 E. & C. BUILDING,
Denver, Colo., March 15, 1910

Mr. H. H. SCHWARTZ,
Chief of Field Service, General Land Office,
Washington, D. C.

SIR: Referring to my letter of the 12th inst. to the commissioner, transmitting a number of letters relative to the Cunningham coal claims and so-called Glavis charges, called for by the joint committee of Congress, I have to advise that I have now found other copies of letters and telegrams bearing on these subjects, and transmit same herewith.

Very respectfully,

M. D. MCENIRY,
Chief Field Division.

[Telegrams.]

WASHINGTON, D. C., July 20, 1909—2.50 p. m.

Special Agent MCENIRY,
Denver, Colo.:

Please advise me when Sheridan leaves for Seattle.

SCHWARTZ,
Actg. Asst. Comr.

712-14 E. & C. BUILDING,
Denver, Colo., July 20, 1909

SCHWARTZ,
Care Commissioner General Land Office, Washington, D. C.:

Sheridan starts Seattle Wednesday evening; arrives Saturday morning, twenty-fourth.

MCENIRY

712-14 E. & C. BUILDING,
Denver, Colo., July 22, 1909

SCHWARTZ,
Care Commissioner General Land Office,
Washington, D. C.:

Smith and Phillips start to-night for Seattle, arrive Sunday morning. Am taking them off of very important coal conspiracy case, but same will keep until they return.

MCENIRY

712-14 E. & C. BUILDING,
Denver, Colo., July 23, 1909

SCHWARTZ,
Care Commissioner General Land Office,
Washington, D. C.

Baje cissin. Phillips and Smith left last night for Seattle.

MCENIRY

[Clarence Cunningham.]

SEATTLE, WASH., October 13, 1908.

REGISTER AND RECEIVER,
Juneau, Alaska.

GENTLEMEN: I have your esteemed favor of September 15th, advising me as to the requirements about filing various papers connected with our railroad. These suggestions have been acted upon and copies sent to the clerk of Valdez, as well as with the secretary at Juneau, Mr. Distin. In writing Mr. Distin I advised him that our articles of incorporation were already on file in his office, having been mailed to your office on March 19th of this year, at which time I requested you to hand them to him in case yours was not the proper office in which to file them. If you have not done so, I hope you will please do so, and upon receipt of their certificates of filing, which your office requires, I will then send you said certificates and also a duplicate of our certified articles of incorporation.

I feel under obligations for the information you have given me in this matter, for although I have asked several leading attorneys to advise me as to the proper procedure, none of them seemed to be clear upon just what was required.

As there is nothing new about our coal titles, it is unlikely that we will take very active steps in any Alaska matters until that question is fully decided.

Thanking you for your courteous assistance, I am

Yours, very truly,

CLARENCE CUNNINGHAM.
C.

Mr. BRANDEIS. Mr. Chairman, after the witnesses, Messrs. Birch and Steele, who are now here, I shall wish to call Secretary Ballinger, and as this examination of Messrs. Birch and Steele may not occupy more than a part of the day, I thought that it might be well to let the Secretary know that he will be needed later. I call Mr. Birch.

Mr. VERTREES. With reference to that, Mr. Chairman, Secretary Ballinger will appear as a witness, and we had arranged not only to present him, but the order in which he will come and appear before the committee, and unless there is some special reason, in view of the statement, I assure the gentlemen that Secretary Ballinger will appear as a witness, and in view of the further fact that he is the person most interested, the one accused, I feel that we ought to have some discretion in the matter of his appearance before the committee.

Mr. BRANDEIS. Mr. Chairman, I think it is important that we should have the opportunity of calling Secretary Ballinger at this time to prove certain matters which can be proved by him, and which it seems to me important that I should lay before the committee. Of course the examination which I make may not cover but a part of the case which Secretary Ballinger wishes to cover, and Secretary Ballinger has himself contemplated that he might be called a number of times, and if you will turn to the letter which he wrote to the committee, it appears clearly that he has desired that he hold himself in readiness to come before this committee at any time, as he himself has expressed it. I desire to put in, through Secretary Ballinger, certain matters that can be best proved and probably only proved, some of them, by him. I do not think the order ought to be changed from that that would naturally prevail in such an inquiry as we are engaged in.

Mr. DENBY. Mr. Brandeis, have you other witnesses in addition to Secretary Ballinger?

Mr. BRANDEIS. I think we may have one or two other witnesses. It will depend quite largely upon the testimony which Secretary Ballinger has given and the documents that have been called for and to which no reply has as yet come.

Mr. DENBY. Mr. Chairman, it seems to me that Secretary Ballinger ought to be permitted to make his own statement in chief himself

prior to being called for cross-examination or for other purposes by the prosecution.

Mr. BRANDEIS. I should like to be heard on that question, Mr. Chairman.

The CHAIRMAN. Go on; proceed with your witness now, and we will consider this matter in executive session.

Mr. BRANDEIS. I should like to be heard on that question, Mr. Chairman. It is vital—

The CHAIRMAN. You can be heard now.

Mr. McCALL. Let Mr. Brandeis state what he wants on that point.

Mr. BRANDEIS. What I desire, Mr. Chairman, is this: This inquiry began, so far as we are concerned, with an explicit statement of the desire on our part to lay before this committee such facts as seem to us to be vital to the question under investigation. Facts are what we deem it our duty to lay before you—the evidence available—and to leave it to you upon the presentation of that evidence fully and fairly to determine what disposition should be made. I declined to make charges, as I believed that my duty to this committee was to lay before you the facts and evidence and to allow the committee certainly to formulate those charges and to defer until a later time in the inquiry our suggestions as to what the conclusions from the facts were that should be drawn and the action which should be taken. Now, obviously, in that position, for us to lay before you the facts, we must have the opportunity of calling upon all witnesses, as well as calling for such documents as would put you best in the possession of the facts upon which you would act. Secretary Ballinger, at an early stage in this inquiry expressed in the fullest way his desire to leave the committee untrammelled in that investigation. He did not then desire to have counsel, lest the interposition of an objection through counsel might appear to hamper the committee in its search after the facts. He has repeatedly in his communications set forth this desire to come before you whenever you desired, to furnish you not only with the official records supplied, but to furnish you any information which his personal files may supply. Now, it seems to me, Mr. Chairman, it is perfectly clear that we should not be brought to a stop in our inquiry without being permitted to lay before you those facts which are only known to Secretary Ballinger, so far as we are aware, or as to which he can best enlighten this committee. I know of no judicial proceeding in which this course would not be open to us, and certainly we are not to be denied that opportunity in a proceeding which the chairman and others have rightly said is a free and full and open inquiry, not even limited in the way in which legal proceedings are ordinarily limited by technical rules. Of course Mr. Ballinger will have the fullest opportunity to make his statement when the time comes for him to make his statement, but the committee ought not, on the other hand, to be denied the opportunity of knowing, and we ought not to be denied the opportunity of presenting to you, those facts which can best come or only come through him, and I, therefore, renew that request that we be permitted to call Mr. Ballinger, without prejudice, of course, to his right to appear as a witness on his own behalf at a later stage of this inquiry.

Senator SUTHERLAND. Mr. Brandeis, may I ask you a question there? You are discussing this matter all the time, if I understand

you, as if the committee were trying a case instead of making an investigation. Now, there are no parties here in the sense we have parties in the courts. If you should go ahead and put in all your testimony and rest, the committee could not entertain a motion for a nonsuit. The committee must hear all that is presented and finally, from all that is presented, make its finding. Now, I suggest to you, without undertaking to indicate what I may myself do about it ultimately, that Mr. Ballinger is the center of an attack here. He ought to be permitted, it seems to me, to make a statement in reply to whatever is presented against him, to make it consecutively without having it drawn out in piecemeal by an examination in the nature of a cross-examination. I can see that it might be very embarrassing or handicap Mr. Ballinger in the situation he is in in this case to have that course taken. It seems to me fairer that he should be called and make his statement, and then you will have full opportunity of cross-examining him about anything you please.

Mr. BRANDEIS. Let me call this to your attention, Senator: Mr. Ballinger has had an opportunity of making his statement. He had the opportunity to make his statement not only in writing to the President, but he had the opportunity of conferring with the President personally on that statement. He has been heard at the greatest length, and he has not only in the letter of September 4, which he laid before the President, but in his conferences with the President, and his later letters that have gone to the President, stated his position most fully. We have his position. I am very ready at any time, although it is already in the evidence—the statements are before the public, and they are before this committee. This witness, if we call upon him, states in answer to facts or to questions which I shall put, will answer those inquiries which to my mind can best be answered by him. It has been constantly stated in the course of this investigation by Mr. Vertrees and others that he did not wish to put on any witness until we had closed with the witnesses that we were to introduce, excepting, of course, so far as he might introduce them in rebuttal. Now, why is not the evidence which we propose offering through Secretary Ballinger to stand on precisely the same footing as the evidence we introduce by any other person?

Mr. JAMES. Mr. Brandeis, let me ask you a question. The evidence you desire to place in the record through Mr. Ballinger—could you do that through any other person?

Mr. BRANDEIS. No. I call Mr. Ballinger because that evidence is evidence as to which he must answer; or perhaps, in part, evidence which we believe as to which he can make clearer and more reliable answers than anybody else.

Senator SUTHERLAND. Mr. Brandeis, can you ask Mr. Ballinger those questions when he comes to make his statement?

Mr. BRANDEIS. I do not think I can ask him those questions to the same advantage in eliciting facts after he has made his statement, and I do not know why he should. He has made his statement and made it very fully.

Mr. McCALL. Mr. Brandeis, let me ask you a question. Are the facts that you intend to prove by Mr. Ballinger cumulative—that is, of the facts you have already brought in—or are they new facts that you can not get access to?

Mr. BRANDEIS. They are of both characters.

Mr. McCALL. Then is it the purpose to generally cross-examine upon all the issues which you have been presenting?

Mr. BRANDEIS. It had been my purpose to cover with Mr. Ballinger all phases of this case which it seems to me require further elucidation. Some of them have not been covered, because the evidence has not been available. Others have been covered, but not so fully covered that I believe this committee would have put before it far greater light by having Mr. Ballinger reply to them.

Mr. MADISON. Mr. Brandeis, I understand that while you disclaimed making any charges in your opening statement of corrupt or criminal action, yet I have always understood that you did state certain things which you intended to prove.

Mr. BRANDEIS. Precisely.

Mr. MADISON. And outlined in fact—

Mr. BRANDEIS. I did it at the request of a member of the committee.

Mr. MADISON. There are a number of things which you said you expected to prove and which in legal analogy would amount to your case.

Mr. BRANDEIS. Yes, sir.

Mr. MADISON. Now, then, I want to ask you, for my own information, if you regard Secretary Ballinger as a material witness to establish one or more of the facts which you stated to this committee you wanted to prove and expected to prove?

Mr. BRANDEIS. I do consider him a material witness, although I believe that I have proved the facts which I alleged by evidence that has already come in. I do consider him a material witness.

Mr. MADISON. The committee has not said to you that you would not be permitted to produce other witnesses for the purpose of proving points already covered by witnesses.

Mr. BRANDEIS. No, sir.

Mr. MADISON. And you do regard him as one of the material witnesses for the purpose of sustaining the things which you stated that you would prove. Is that right—is that your situation?

Mr. BRANDEIS. Yes.

Mr. MADISON. Is that why you asked for him?

Mr. BRANDEIS. Yes. And also I may add, you remember my statement of what I purposed proving was rather short. There are other facts which I think I did not state then which will be elicited.

Senator FLETCHER. Is it further true, Mr. Brandeis, that you expect to establish by Mr. Ballinger himself some facts which, unless you can prove them by him, you might be required to summon numbers of witnesses who might have some knowledge of the facts, but the more direct and positive knowledge is in the possession of Mr. Ballinger himself?

Mr. BRANDEIS. I believe that to be true.

Mr. OLMSTED. Mr. Brandeis, there is not the slightest doubt in anybody's mind but that Mr. Ballinger will be a witness and will be most thoroughly examined and cross-examined. Now is it not a fact that it is not so much a matter of your convenience or Mr. Ballinger's convenience or wishes, but as to the convenience of this committee and for it to decide whether it will best get the facts by having Mr. Ballinger upon the stand at the time of his direct examination, when

his direct examination and cross-examination may be very complete, or whether we will have him called at a different variety of times to satisfy counsel, and perhaps the same thing gone over half a dozen times, or whether we will call him at such times as it seems best to the committee for the purpose of eliciting all the facts in the case?

Mr. BRANDEIS. It seems to me, Mr. Olmsted, the contingency you suggest is one hardly likely to arise after I have finished the direct examination which I have in mind. Either Mr. Vertrees or the committee would, following the custom which has been pursued hitherto, have the full opportunity of bringing out from Secretary Ballinger at that time any of the facts which had not been fully disclosed in the direct examination.

Mr. OLMSTED. Then, after we have had some more witnesses, we will then have to recall him again.

Mr. BRANDEIS. If there should be any facts, I do not know whether there will be any more called; there might not be any more called—I mean by us.

Senator SUTHERLAND. What you want, Mr. Brandeis, is that the cross-examination should precede the direct examination.

Mr. BRANDEIS. I should not exactly express it in that way, but I want to examine him upon what he has said, upon what he has done, and upon certain things that he has not said.

Mr. McCALL. And I understood you to say, Mr. Brandeis, upon any material issue of this case, that is, it would be practically a cross-examination that you desire.

Mr. BRANDEIS. I desire that liberty.

Mr. MADISON. Liberty to do what?

Mr. BRANDEIS. To make an examination covering the whole case. I do not wish to limit myself at this time as to the scope of the examination.

Mr. DENBY. Mr. Brandeis, you seem to lay stress upon the fact that Mr. Ballinger has already had opportunity to make a statement after conference with the President. Is not the same thing exactly true of other parties who appeared before the committee?

Mr. BRANDEIS. I think it is not true, Mr. Denby.

Mr. DENBY. Have there not been public documents where conferences were held with the President?

Mr. BRANDEIS. I think it is very marked with my particular client, Mr. Glavis, who has been in a different position. Mr. Glavis went to the President on the 18th of August and laid before the President a brief statement and had a very brief conference, which, of course, was not gone into. It did appear upon the statement of Mr. Glavis that the President said then that he should remain in Boston and that he might wish to confer with him later. Mr. Glavis stayed there, and after putting in five days was told that he should return to the coast. Mr. Glavis has never seen, until this Senate Document 248 was printed, the answer of a single person on whose answer he was heard orally as well as in writing and condemned, and separated from the service. Now, I say that condition is a very different condition, because Secretary Ballinger not only submitted all the matters in writing, but he submitted them in writing and followed them up by oral conferences, and Mr. Glavis was dismissed without having heard his accusers.

Mr. DENBY. Mr. Brandeis, Mr. Glavis having seen all these papers and having had ample opportunity to prepare, did testify quite uninterruptedly, as long as he cared to do so or you cared to have him do so?

Mr. BRANDEIS. He certainly testified at length, perhaps longer than the committee desired.

Mr. DENBY. Was there any suggestion at that time to interfere with the orderly presentation of your case as you had outlined it?

Mr. BRANDEIS. I have no fault to find, but I think there were many interruptions—not that I did not welcome them, because I was very glad to have the committee ask any questions.

Mr. DENBY. That was not my question. Was there any suggestion made or disposition shown to interfere with the orderly presentation of your case as you had outlined it and as you wished to present it to the committee?

Mr. BRANDEIS. I do not think so.

Mr. DENBY. Or to anticipate the direct examination of the witness by such interference?

Mr. BRANDEIS. Yes, sir; I think there was, but I had no objection to it, because I thought it all elucidated the case.

Mr. DENBY. There was no such disposition shown, was there?

Mr. BRANDEIS. I think if you will look at the record you will find any number of interruptions, but I welcomed them because I thought that they tended to elucidate the matter, and there was nothing that I did not care to have brought out.

The CHAIRMAN. You may proceed with the examination of the witness, and we will take this matter up and dispose of it in executive session.

Mr. VERTREES. Mr. Chairman——

The CHAIRMAN. Mr. Vertrees desires to be heard.

Mr. VERTREES. Mr. Chairman, on this question, if the committee desires any further hearing I should like to be heard, because I shall most earnestly object to any such procedure and I shall have something to state with respect to it, but not now unless it is the pleasure of the committee.

Mr. BRANDEIS. I should like to hear what Mr. Vertrees has to say.

Mr. VERTREES. I merely rise now to ask that a subpoena issue for Charles C. Heltman of this city, who was formerly Chief of the Mineral Division.

The CHAIRMAN. Is he in the city?

Mr. VERTREES. Yes, sir; and I was about to request a subpoena for Mr. E. T. Perkins, of Chicago, but I understand that Mr. Perkins has requested that he be called by the committee.

The CHAIRMAN. He has been requested to come here, and we have advised him that we would notify him at the proper time so as not to keep him here any longer than was necessary. Do you want this other witness subpoenaed immediately?

Mr. VERTREES. No, sir; we will not need him this week.

The CHAIRMAN. You may let me know when you need him, and he will be subpoenaed. We do not like to have witnesses remain here any longer than is necessary.

Mr. VERTREES. In the same connection, Mr. Chairman, you will recall that the evidence taken in the hearings in the Cunningham cases—that is so much of it as was heard—was called for by the com-

mittee and has been printed in the volume. Since that time additional evidence of importance has been taken, other depositions that I now have in my hand. Mr. Magee, the commissioner, has just given me the copies.

The CHAIRMAN. These are copies, are they?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. We printed the copies and the originals were returned.

Mr. VERTREES. You printed the originals. These are additional depositions. You will recall that the commissioner was in Paris at the time taking depositions, and Mr. Cunningham's and other depositions have been taken since these were printed. I desire to have these made a part of the record.

The CHAIRMAN. If there is no objection that will be done.

Mr. BRANDEIS. Not at all, but I desire to call the attention of the chairman to the fact that the record which we have, which has been printed, is not complete to date. There are quite a large number of exhibits.

The CHAIRMAN. I suppose these are supplemental to that?

Mr. VERTREES. These will bring them up to date.

Mr. BRANDEIS. I mean up to the date it purports to cover. It is not complete, and I suggest that the clerk of the committee confer with Mr. Magee so as to secure an absolutely complete record. There are quite a number of exhibits which were introduced in evidence, which have not yet been printed, doubtless because the office copy did not contain them.

Mr. VERTREES. Another reason was that these original exhibits were in the hands of the commissioner and these parties abroad, and they could not be gotten at, but they are now here, all of them.

The CHAIRMAN. We will secure copies of them and have them printed.

TESTIMONY OF STEPHEN BIRCH.

Stephen Birch, having been first duly sworn by the chairman, testified as follows:

Mr. BRANDEIS. Mr. Birch, where do you live?

Mr. BIRCH. At Kennicott, Alaska.

Mr. BRANDEIS. What is your occupation?

Mr. BIRCH. I am managing director for the Morgan-Guggenheim syndicate in Alaska.

Mr. BRANDEIS. What is the Morgan-Guggenheim syndicate?

Mr. BIRCH. It is formed of the firm of J. P. Morgan & Co. and some of the members of the M. Guggenheim Sons.

Mr. BRANDEIS. Does it rest upon a written agreement—the syndicate?

Mr. BIRCH. I do not quite understand your question.

Mr. BRANDEIS. I mean is the syndicate—the relations of J. P. Morgan & Co. and the members of M. Guggenheim Sons—are they evidenced by some writing or agreement?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Have you that writing here?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. Were you not requested to produce it?

Mr. BIRCH. Not that I know of.

Mr. BRANDEIS. In connection with other papers?

Mr. BIRCH. Not that I know of.

Mr. BRANDEIS. Are you able to state now what the nature of that writing or agreement is?

Mr. BIRCH. I am not so much familiar with that agreement as I am with the field operations of the syndicate, and I think you can obtain better information regarding that from Mr. Steele, the general counsel of the company.

Mr. BRANDEIS. How long have you been the manager of the Morgan-Guggenheim syndicate?

Mr. BIRCH. Since 1906.

Mr. BRANDEIS. What time in 1906?

Mr. BIRCH. I think along about in March.

Mr. BRANDEIS. Did you act for either J. P. Morgan & Co. or for the Guggenheims prior to that time?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. Did you prior to that time act in relation to any investments in Alaska?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. For whom?

Mr. BIRCH. For H. O. Havemeyer, Norman Schultz, and James H. Ralph.

Mr. BRANDEIS. When, so far as you know, did the Morgans first acquire an interest in Alaska?

Mr. BIRCH. Well, I could not answer that, as to when J. P. Morgan & Co. first acquired an interest in Alaska.

Mr. BRANDEIS. What, so far as you know, had been acquired prior to the formation of the Alaska syndicate in March, 1906?

Mr. BIRCH. So far as I am informed J. P. Morgan & Co. had some interest in the Northwestern Commercial Company.

Mr. BRANDEIS. And is that the only interest, so far as you are aware, that they had prior to the formation of the syndicate?

Mr. BIRCH. All that I am aware of.

Mr. BRANDEIS. What interest, if any, did the Guggenheims have prior to the formation of the Alaska syndicate?

Mr. BIRCH. I do not know of any.

Mr. BRANDEIS. What interests do the Alaska syndicate now own or control?

Mr. OLMSTED. When you speak of the Alaska syndicate, what do you mean?

Mr. BRANDEIS. Mr. Birch, is the Morgan-Guggenheim syndicate commonly called the Alaska syndicate?

Mr. BIRCH. That is it. The Alaska syndicate is interested in the Northwestern Commercial Company.

Mr. BRANDEIS. Mr. Chairman, I suggested yesterday to Mr. Sleman that this witness had produced, or Mr. Steel had produced, before the Territories Committee a map of Alaska, which I understand has been found very useful in explaining the witnesses' testimony before that committee. If it is available, I would like to have it now.

Mr. SLEMAN. I have it here.

Mr. BRANDEIS. Mr. Sleman tells me that he has that map, and I think it would be useful to the committee to have it before them now.

The CHAIRMAN. Somebody sent me a blueprint map. I do not

know but that is it. The blueprint map that was sent over this morning is much better.

(The map referred to was here produced.)

Mr. BRANDEIS. Is that the map you had reference to, Mr. Birch?

Mr. BIRCH. That is a large enough map to show around the coal fields, but not the interior of Alaska, where the railroads go.

Mr. BRANDEIS. You were stating that the Alaska syndicate was interested in the Northwestern Commercial Company.

Mr. BIRCH. You asked me for a list of what they were interested in.

Mr. BRANDEIS. What is the Northwestern Commercial Company?

Mr. BIRCH. The Northwestern Commercial Company—

Mr. MADISON. Pardon me. I would like for my own information to have him go right through now, and make a statement of the interests in which the companies are interested. Take them up seriatim.

Mr. BRANDEIS. The first is the Northwestern Commercial Company. Does that company—

Mr. MADISON. Now, let him state the second one.

Mr. BRANDEIS. I think as a matter of fact that that company controls other companies. It is a holding company as well as operating directly, and I think it might be well to indicate—

The CHAIRMAN. The Northwestern Commercial Company is a trading and steamboat company.

Senator ROOT. He has not answered, Mr. Brandeis. I think he ought to go on and complete his answer by giving the list. Let him do that first.

Mr. BRANDEIS. Yes; do that.

Mr. BIRCH. The Northwestern Commercial Company, the Northwest Fisheries Company, the Alaska Steamship Company, the Kennecott Mine Company, the Copper River and Northwestern Railway Company, and the Katalla Company.

Mr. MADISON. What is the third that you have mentioned?

Mr. BIRCH. The Alaska Steamship Company.

The CHAIRMAN. Let me see if I understand you, Mr. Birch. Are those the companies that are controlled by this syndicate?

Mr. BIRCH. Some of them are controlled by the syndicate.

The CHAIRMAN. What you call the Morgan-Guggenheim syndicate?

Mr. BIRCH. Some of them are controlled by the syndicate and some of them are held in the treasury of the Northwestern Commercial Company, in which the Alaska syndicate is interested.

Mr. DENBY. But these all are not under one classification, then, those that you have named?

Mr. BIRCH. No, sir.

Mr. DENBY. Then what is the purpose of naming them in this connection?

Mr. BIRCH. I was asked to name the various companies in Alaska in which the Alaska syndicate was interested.

Mr. DENBY. Interested? I understand.

Senator PURCELL. And the Alaska syndicate is the Morgan-Guggenheim interest?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Now, Mr. Birch, returning to the Northwestern Commercial Company, will you state what interest the syndicate has in that company?

Mr. BIRCH. They have 46.2 per cent in the Northwestern Commercial Company.

Senator FLETCHER. Give the number of shares.

Mr. BIRCH. Thirteen thousand eight hundred and sixty-four shares out of a total of 30,000 shares.

Mr. BRANDEIS. Three million dollars capital, is it?

Mr. BIRCH. Yes, sir; \$3,000,000 capital.

Mr. BRANDEIS. Now what is the Northwestern Commercial Company?

Mr. BIRCH. The Northwestern Commercial Company at the present time is more of a holding company, but they operate a commercial business at Nome and own the stock of the Northwest Fisheries Company, which operates canneries in Alaska, and have 82 per cent of the stock of the Alaska Steamship Company.

The CHAIRMAN. Let me ask you a question. Did not this commercial company that you referred to operate a line of steamers on the Yukon River?

Mr. BIRCH. No, sir.

The CHAIRMAN. Did they not do it formerly?

Mr. BIRCH. No, sir.

The CHAIRMAN. The Northwestern Commercial Company?

Mr. BIRCH. No, sir; never. I think you are referring to the Northwestern Commercial Company.

The CHAIRMAN. Oh, I see. This is the Northwestern?

Mr. BIRCH. Yes, sir; the Northwestern Commercial Company.

Mr. BRANDEIS. Who owns the balance of the stock of the Northwestern Commercial Company?

Mr. BIRCH. That is distributed among a number of stockholders.

Mr. BRANDEIS. Who are the principal ones?

Mr. BIRCH. I have not a list of the stockholders now, but a great deal of that stock is held abroad.

Mr. BRANDEIS. Where else is it held?

Mr. BIRCH. In different parts of the United States—Chicago, New York, and different places.

Mr. BRANDEIS. In Seattle?

Mr. BIRCH. I think so.

Mr. OLMSTED. Do you call Chicago abroad?

Mr. BIRCH. No, sir; I said Chicago also. He wanted to know what other places.

Mr. BRANDEIS. Do you recall anyone in Seattle or the State of Washington interested in the company?

Mr. BIRCH. Outside of the people connected with the company itself?

Mr. BRANDEIS. No; I mean——

Mr. BIRCH. Well, Charles Peabody, the president of the Alaska Steamship Company, is a stockholder; D. H. Jarvis, the treasurer of the company, and W. R. Rust, who is the president of the Northwestern Commercial Company, and Thomas Greeneau, of Spokane, is interested, and John Rosene and his family, and a man named Trenholm.

Mr. BRANDEIS. Are those the only stockholders who live in the State of Washington?

Mr. BIRCH. There might be more, but that is all that I can recall.

Mr. BRANDEIS. You are not familiar with the list of stockholders yourself?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. Now, what is the business of the Northwestern Fisheries Company?

Mr. BIRCH. Packing salmon.

Mr. BRANDEIS. How many canneries have they?

Mr. BIRCH. Eight canneries.

Mr. BRANDEIS. Is it not 12?

Mr. BIRCH. I do not know that they are operating all of those canneries. They are operating eight according to this list which I have here.

Mr. BRANDEIS. Mr. Steele asks me to call your attention to your statement before the Territories Committee on page 75.

The CHAIRMAN. Let me ask you, Mr. Brandeis, if you could not prove this fact much more readily by Mr. Steele?

Mr. BRANDEIS. I have just asked him, and he says that he is not familiar with the situation.

Mr. STEELE. No, sir; I am not familiar with those.

Mr. BIRCH. There are 12 canneries.

Mr. BRANDEIS. What is the capital stock of the Northwestern Fisheries Company?

Mr. BIRCH. I think it is \$1,000,000.

Mr. BRANDEIS. And it is all held by the Northwestern Commercial Company?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. What other corporation does the Northwestern Commercial Company control? I think you mentioned the Alaska Steamship Company?

Mr. BIRCH. They have 82 per cent of the Alaska Steamship Company's stock.

Mr. BRANDEIS. What is the capital stock of the Alaska Steamship Company?

Mr. BIRCH. That is \$3,000,000.

Mr. BRANDEIS. And the balance of that stock is held by Mr. Peabody?

Mr. BIRCH. Mr. Peabody; yes, sir.

Mr. BRANDEIS. How many steamers does the Alaska Steamship Company own?

Mr. BIRCH. They own now 12 steamers.

Mr. BRANDEIS. And what are the lines covered by those steamers?

Mr. BIRCH. In southeastern Alaska and central Alaska and into Nome and Seward Peninsula.

Mr. BRANDEIS. Are the lines of those steamers confined to Alaska, or do they extend to the United States?

Mr. BIRCH. They ply between Alaskan ports and the United States port, which is Seattle.

Mr. BRANDEIS. That is, they all ply to Seattle from the Alaskan ports that you have named?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. What other companies, if any, does the Northwestern Commercial Company control?

Mr. BIRCH. A small lighterage company, called the North Coast Lighterage Company, which I omitted to state before.

Mr. BRANDEIS. Any other companies?

Mr. BIRCH. None that I know of.

Mr. BRANDEIS. Now, what other companies are controlled by the syndicate—coming now to the Kennicott Mine Company; what is that?

Mr. BIRCH. The Kennicott Mine Company owns the Bonanza mine.

Mr. BRANDEIS. What is the capital stock of that company?

Mr. BIRCH. Two million five hundred thousand dollars.

Mr. BRANDEIS. Is it all held by the Alaskan syndicate?

Mr. BIRCH. Yes, sir.

Mr. McCALL. Do you mean par value in dollars or shares?

Mr. BIRCH. Dollars.

Mr. OLMSTED. Is that a coal mine?

Mr. BIRCH. That is a copper mine.

Mr. BRANDEIS. It owns, besides the Bonanza, other mines, does it not?

Mr. BIRCH. It is the Bonanza group. That is the name of one of the claims. It has a number of other claims.

The CHAIRMAN. That is up on the Chitina River, a branch of the Copper River?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. You mean to include in the term "Bonanza" the Excelsior, the National, the Independence, and Jumbo mines, do you?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. How many are there altogether in the group known as the Bonanza mine?

Mr. BIRCH. The Bonanza mine is the name of one claim. The Kennecott Mine Company owns the Bonanza mine and a number of other claims contiguous to that.

Mr. GRAHAM. Is "claim," in that sense, and "mine" the same thing?

Mr. BIRCH. Well, it is commonly known as the Bonanza mine.

Mr. GRAHAM. I know; but you mention the Bonanza mine, and a number of claims contiguous to it. When you say "claims," do you mean other mines?

Mr. BIRCH. Other locations.

The CHAIRMAN. There are a group of mines up on the Chitina River, and they are commonly known by the name of the Bonanza mine?

Mr. BIRCH. Yes, sir.

Mr. MADISON. You say locations, do you, because the development has not progressed to such an extent that they can properly be called mines?

Mr. BIRCH. Yes, sir.

Mr. MADISON. That is the idea, is it?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. How many of them are being worked now?

Mr. BIRCH. None of them are being worked at the present time.

Mr. GRAHAM. How many of them are in process of preparation for operation?

Mr. BIRCH. Three.

The CHAIRMAN. There can not any of them be worked effectively until you get the railroad up there, can they?

Mr. BIRCH. No, sir.

Mr. GRAHAM. How many, under favorable circumstances, are susceptible of operation?

Mr. BIRCH. That would all depend upon the development of the properties which they are now working upon.

Mr. GRAHAM. Can you give an estimate?

Mr. BIRCH. No, sir; that would only be a guess.

Mr. GRAHAM. Could you fix a minimum?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. What other corporation is controlled by the Alaska syndicate besides those you have mentioned?

Mr. BIRCH. They do not control all of those companies which I have mentioned; they are simply interested in them. They control the Kennecott Mines Company, the Copper River and Northwestern Railway Company, and the Katalla Company.

Mr. BRANDEIS. You do not wish to vary in any way the testimony which you gave in this matter up to the present time, do you?

Mr. BIRCH. Why, no, sir; there is nothing to vary about at all.

Mr. GRAHAM. Mr. Brandeis, in that connection the testimony already given was not quite testimony. Suppose you cover that point and ask the witness, who is now sworn and who was not sworn when he made his other statement, as to that matter.

Mr. BRANDEIS. I mean as to what he has testified to to-day.

Mr. GRAHAM. Oh; I beg your pardon. I thought you had reference to what appears in the published pamphlet.

Mr. BRANDEIS. No, sir.

Mr. STEELE. I think Mr. Birch means, when he says controlled by the syndicate, absolutely owned by the Alaska syndicate. He makes that distinction between those which were absolutely owned and those which it is only interested in through its percentage of the stock of the Northwestern Commercial Company.

Mr. BRANDEIS. Precisely. Now, coming to the Katalla Company, what is that company?

Mr. BIRCH. That is a constructing company. It is constructing the Copper River and Northwestern Railroad.

Mr. BRANDEIS. What is the capital stock of that company?

Mr. BIRCH. I can not say.

Mr. BRANDEIS. What percentage of the stock of that company is owned by the Alaska syndicate?

Mr. BIRCH. All.

Mr. BRANDEIS. All of it?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. What corporation, if any, does the Katalla company own or control?

Mr. BIRCH. None.

Mr. BRANDEIS. Who controls the Copper River and Northwestern Railroad Company?

Mr. BIRCH. The Alaska syndicate.

Mr. BRANDEIS. What is the capital stock of the Copper River and Northwestern Railroad Company?

Mr. BIRCH. That I can not tell you.

Mr. BRANDEIS. Is there not another company which you have omitted, namely, the Copper River Railway Company?

Mr. BIRCH. That has been absorbed by the Copper River and Northwestern Railway.

Mr. BRANDEIS. When was it absorbed?

Mr. BIRCH. I think Mr. Steele could tell you better in regard to that.

The CHAIRMAN. That first-named company was a company that was gotten up by the English and Canadians, was it not?

Mr. BIRCH. The Katalla Company?

The CHAIRMAN. The first-named railway company?

Mr. BIRCH. The Copper River Railway Company.

The CHAIRMAN. That was a company gotten up by English people and Canadians, was it not?

Mr. BIRCH. By Mr. Heney and Mr. Graves.

The CHAIRMAN. And that was merged into other railway companies subsequently?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. They bought out the other roads?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. When was it merged?

Mr. BIRCH. As to that I will have to refer you to Mr. Steele.

Mr. BRANDEIS. Are not there some other companies that you have not mentioned—is not there a Northwestern Development Company?

Mr. BIRCH. Yes, sir. I think that the Northwestern Commercial Company has some stock in the Northwestern Development Company.

Mr. BRANDEIS. Does it not control the Northwestern Development Company?

Mr. BIRCH. No, sir; it does not.

Mr. BRANDEIS. What is the Northwestern Development Company?

Mr. BIRCH. Why, I think it a busted company about now.

Senator SUTHERLAND. What is that?

Mr. BIRCH. It is a busted-up company.

Mr. BRANDEIS. You mean to say it has gone out of existence or that it is bankrupt?

Mr. BIRCH. It is bankrupt.

Mr. BRANDEIS. It may nevertheless be a company, although it is bankrupt. What is it?

Mr. BIRCH. Why, it is a little company Mr. Rosine started in the Seward Peninsula. The details of it and their holdings and their operations I am not familiar with. I know the Northwestern Commercial Company puts absolutely no value upon its holdings in that company.

Mr. BRANDEIS. It still has them?

Mr. BIRCH. I think so.

Mr. BRANDEIS. Now, is there not a little railroad also up there, which you have omitted to state?

Mr. BIRCH. The Seward Peninsula Railway was controlled by the Northwestern Development Company.

Mr. BRANDEIS. It is still, is it not?

Mr. BIRCH. I think so.

Mr. BRANDEIS. That ought to be mentioned, then, ought it not?

Mr. BIRCH. It was such a trifling thing, and did not amount to anything—

Mr. BRANDEIS. What other trifling things are there you have not mentioned?

Mr. BIRCH. You may be able to bring them out. I do not remember now.

Mr. BRANDEIS. You don't remember any. Is Mr. Steele more familiar with those various corporations than you are?

Mr. BIRCH. He may be.

Mr. STEELE. I am familiar with that one, Mr. Brandeis, the Northern Development Company.

Mr. BRANDEIS. Well, now, when did you first learn of any negotiations between the Morgan-Guggenheim syndicate and the Cunningham claimants?

Mr. BIRCH. In the spring of 1907. I talked with Clarence Cunningham myself in regard to the coal claims which he was interested in.

Mr. BRANDEIS. How early in the spring?

Mr. BIRCH. In the fore part of April.

Mr. BRANDEIS. And where did this conversation take place?

Mr. BIRCH. In Seattle.

Mr. BRANDEIS. What next did you have to do with the relation of the Morgan-Guggenheim syndicate with the Cunningham claimants?

Mr. BIRCH. Why, I had talked with Mr. Cunningham at the time—

Mr. BRANDEIS. You mean in April?

Mr. BIRCH. In April.

Mr. BRANDEIS. When next, after April, 1907?

Mr. BIRCH. I think in June.

Mr. BRANDEIS. Where was that conference?

Mr. BIRCH. In Seattle.

Mr. BRANDEIS. And when next after that?

Mr. BIRCH. I could not say exactly when it was. I have seen him a number of times since then.

Mr. BRANDEIS. A number of times since June, 1907?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Did you see him again during the year 1907?

Mr. BIRCH. I don't recall seeing him. I went up to Alaska in June.

Mr. BRANDEIS. Of 1907?

Mr. BIRCH. In 1907. I went in through the interior and was gone all summer, and did not return to Seattle until along in September or October. Whether I saw Cunningham then or not I could not say now; I do not think I did.

Mr. BRANDEIS. Now you have here the agreement, the so-called option, signed by Clarence Cunningham, Miles C. Moore, and A. B. Campbell, representing themselves and a committee of the Cunningham claimants, dated July 20, 1907.

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Will you produce that?

Mr. BIRCH. Yes, sir. [Witness produces paper.]

Mr. BRANDEIS. Is that the original agreement?

Mr. BIRCH. No, sir; that is the copy.

Mr. BRANDEIS. Where is the original agreement?

Mr. BIRCH. I do not know.

Mr. BRANDEIS. Mr. Steele will be better able to testify about that?

Mr. BIRCH. Probably he can tell you that.

Mr. STEELE. I can not tell you exactly where it is, Mr. Brandeis, but if the committee wants it I can wire for it and it will be here tomorrow. I do not know exactly where it is, but it certainly can be found.

Mr. BRANDEIS. You are able to state, Mr. Steele, that the copy handed me by Mr. Birch is a correct copy of that agreement?

Mr. STEELE. Yes, sir; that is a correct copy of the original. If you want the original, I can wire for it.

The CHAIRMAN. I suppose that is a correct copy.

Mr. BRANDEIS. We will introduce this as a copy for the present subject to call for the original agreement if it should be deemed necessary. We introduce this agreement, however, which you have read, as a basis for further examination. [Reading:]

MEMORANDUM.

A. B. Campbell, Clarence Cunningham, and M. C. Moore, acting for themselves and certain parties associated with them, as hereinafter explained and hereinafter called the vendors, make the following representation and proposal to Daniel Guggenheim, of the city of New York, hereinafter called the vendee.

The said Cunningham, Campbell, and Moore, with 30 other parties, have acquired by purchase from the Government of the United States, under the federal coal-land law, 33 tracts of coal land of 160 acres each, aggregating 5,280 acres, situated in the Kaval recording district of Alaska near the Bering River, about 25 miles from Katalla, and also have acquired certain inchoate water rights on Lake Kustakaw intended to be used in the exploitation of said properties.

The title to these lands rests in final United States receiver's certificate of entry, issued one to each of said 33 persons, and the papers in application for patent are now before the Commissioner of the General Land Office for his action thereon.

In order to consolidate the several interests for the purpose of dealing with said properties as an entirety, it has been determined that each of said entrymen shall convey his title to his individual tract to the Union Trust Company of Spokane, Wash., in trust, for the purpose of transmitting or dealing with the title to the consolidated tract in such manner as shall be directed by C. J. Smith, R. K. Neill, H. W. Collins, Frederick Burbridge, Fred H. Mason, A. B. Campbell, and Clarence Cunningham, or a majority of those acting as a committee of said entrymen appointed for that purpose.

Conveyances by some of said entrymen to said trust company have been executed and delivered, and it is contemplated that all will execute similar conveyances within a short time.

A meeting of said entrymen was recently held at the city of Spokane, in which 22 out of the 33 participated. At said meeting a resolution was unanimously passed authorizing said committee or a majority of them to enter into negotiations with parties with a view to the equipment, development, and operation of the consolidated property and the sale of its product.

Acting for themselves and as such committee representing their associates under said resolution, they submit to Mr. Guggenheim for his consideration the following proposal:

1. A corporation shall be formed under the laws of some State of the Union, under which laws meetings of directors may be held without the States of incorporation the capital stock to be unassessable, and no individual stockholders' liability.

2. The capital shall be \$5,000,000, divided into 50,000 shares of the par value of \$100 each.

3. There shall be seven directors, three to be named by the vendors, three by the vendee. The seventh director shall be designated by the six named by the parties.

4. The title of all of said properties, including said inchoate water rights, shall be transferred to said corporation, in consideration for which there shall be issued to said vendors 25,000 shares of said capital stock.

5. The other half of said capital stock, viz, 25,000 shares, shall be deposited in escrow with the Bank of California, Seattle, with instructions to make delivery of same to Mr. Guggenheim or his nominee upon his payment to said depository, to the credit of said corporation, of the sum of \$250,000, or at the rate of \$10 per share. Said \$250,000 shall be paid in such sums and at such times as may be called for by the board of directors. Said money to be considered as "working capital," to be expended by said corporation in the equipment, development, and operation of said properties. As payments are made by Mr. Guggenheim to said bank the bank shall be authorized to deliver to him one share of stock for each \$10 so paid by him. Mr. Guggenheim shall have the privilege of paying said entire amount of working capital at any time and thereupon to receive the entire 25,000 shares of said stock.

6. Should said sum of \$250,000 prove inadequate for the purpose of equipping and developing said property, Mr. Guggenheim shall advance or loan to the corporation an additional sum of money, not exceeding in the aggregate \$100,000, the corporation binding itself to repay such advances on or before three years after the date of making the same, at the option of the board of directors of said corporation, with interest at 5 per cent per annum.

7. Said corporation shall enter into an agreement giving to said Guggenheim or his nominee the exclusive right to purchase for the period of twenty-five years the entire run-of-mine coal mined from said property, or so much thereof as said Guggenheim or his nominee may require or demand, for the sum of \$2.25 per ton of 2,240 pounds. The coal is to be delivered at the mine either in bunkers to be provided by the corporation for that purpose or upon cars, as said Guggenheim or his nominee may direct. Said Guggenheim or his nominee shall use their best endeavors to make a market for the coal in Alaska, and in the ports and cities of the United States, to the end that as large a quantity of coal as possible may be mined. Said Guggenheim or his nominee shall all agree to purchase all coal which they may require for use or sale from said corporation.

8. Payment for all coal so delivered to said Guggenheim or his nominee shall be made monthly, upon the basis of weights determined by the mine superintendent, such payments to be made at such place as may be directed by the corporation.

9. The corporation shall convey to such railroad company as may be designated by said Guggenheim, and which shall construct a railroad from tide water to said mines, sufficient ground from its holding upon which to establish and maintain its tracks, switches, depots, terminals, stations, and other railway facilities.

10. The corporation shall further agree to sell and deliver, during the period of twenty-five years, to such railroad company as may be designated by said Guggenheim or his nominee, all coal which may be acquired by said railroad company for consumption in its locomotives, shops, stations, and other facilities employed in the construction, maintenance, and operation of its railway, for the sum of \$1.75 per ton of 2,240 pounds, deliveries to be made at the mine in bunkers or on the cars of such railway.

11. The said Guggenheim shall have twenty days from the date hereof in which to determine whether or not he will cause an examination of said properties to be made with a view to an acceptance of this proposal if such examination proves satisfactory. He shall notify the vendors of such determination within said time by telegram addressed to Clarence Cunningham at Seattle, Wash. Thereupon if he elects to proceed with such examination he shall be allowed the period of four months thereafter to inspect the properties and investigate the titles thereto. If such inspection and examination prove satisfactory he shall give notice of his final acceptance of this proposal by telegram directed to Clarence Cunningham, Seattle, Wash.

Thereupon the terms of this proposal shall be deemed binding upon all the parties and shall be carried into effect according to its tenor and purport.

12. It is understood, however, that said vendee shall not be required to proceed with said examination unless all of the 33 of the owners of said coal-land entries, or so many thereof as shall be satisfactory to said vendee, shall have conveyed their respective properties to said trust company, and said trust company shall, under the direction of said committee, and as the holder of the title to said properties, have accepted the terms of the proposal and obligated itself to unite with said vendors in carrying the same into effect, in the event the examination of said properties and titles shall prove satisfactory to the vendee, and he shall elect to finally accept the same.

Should the number of entrymen declining to convey their respective tracts to said trust company and participate in this proposal be so great as in the judgment of said vendee will prevent the successful inauguration and conduct of said enterprise, then and in that event this negotiation shall be at an end, and all parties shall be relieved from all obligations arising hereunder.

Witness our hands in duplicate this 20th day of July, 1907.

A. B. CAMPBELL,
M. C. MOORE,
CLARENCE CUNNINGHAM,

For themselves and as a committee representing their associates.

Signed in the presence of—

S. W. ECCLES.
CURTIS H. LINDLEY.

Mr. BRANDEIS. Was that agreement taken by Mr. Guggenheim on behalf of the Morgan-Guggenheim syndicate?

Mr. BIRCH. Yes.

Mr. BRANDEIS. Was there, preceding the execution of this agreement, any written communication which passed between the Morgan-Guggenheim syndicate, or anyone representing them, and Mr. Cunningham, or the Cunningham claimants, or any other person representing them?

Mr. BIRCH. I have a letter here dated May 1, 1907, addressed to me by Mr. Clarence Cunningham, and also a telegram.

Mr. BRANDEIS. Are those the earliest communications relating to this subject?

Mr. BIRCH. Those are the earliest I have and the earliest that I know of.

Mr. JAMES. What is the date of that?

Mr. BIRCH. The telegram is dated April 23, 1907.

Senator SUTHERLAND. What was the date of the option agreement, Mr. Brandeis?

Mr. BRANDEIS. July 20, 1907.

Mr. MADISON. Now, for the purpose of helping us to get an intelligent understanding, what is the date of the making of the entries? That has been gone over, but we forget it from time to time.

The CHAIRMAN. They had all preceded this.

Mr. BRANDEIS. Not all, Mr. Chairman.

The CHAIRMAN. All the Cunningham claims.

Mr. BRANDEIS. I beg your pardon.

Senator ROOT. Mr. Brandeis, perhaps you can refer us to the page of the testimony. I have just been looking for the schedule of those entries.

Mr. BRANDEIS. It is on page 175 of the Senate document.

Mr. GRAHAM. And on page 324 of the evidence.

Mr. BRANDEIS. You will note from that the date of entry and payments was February, March, and April, the last in April, being April 23, but that there was three claims, those of W. H. Warner, Frank A. Moore, and Nelson B. Nelson, where the date of entry and payment was not until October 25, 1907.

The CHAIRMAN. Were those of the Cunningham group, too?

Mr. BRANDEIS. Those were all of the Cunningham group, and that fact, Mr. Chairman, you will find referred to in the recitals of this option agreement of July 20. Judge Madison, was that an answer to your question?

Mr. MADISON. Yes, sir. What, again, is the date of this telegram?

Mr. BRANDEIS. The date of the telegram is April 23, 1907, the date on which quite a number of these payments and entries were made.

Mr. MADISON. I notice.

Mr. BRANDEIS. The telegram which I now introduce is as follows:

SPOKANE, WASH., April 23, 1907.

S. S. BIRCH, 45 Broadway, New York:

Am calling meeting to perfect organization so proposition can be arranged.

(Signed) CLARENCE CUNNINGHAM.

Now, how long had you been in New York before you received this telegram?

Mr. BIRCH. I do not recollect.

The CHAIRMAN. You offer that telegram in evidence?

Mr. BRANDEIS. I offer it in evidence.

The CHAIRMAN. It is admitted.

Senator ROOT. This schedule which is on page 175 of Senate document, is it in our testimony?

Mr. BRANDEIS. Yes, sir; it is in. I think Mr. Graham referred to the page.

Mr. GRAHAM. The point at which it gives the entrants and their addresses, but not the dates of their entries.

The CHAIRMAN. On page 175 you will find the list.

Senator ROOT. That is in the Senate document. I do not find it in our testimony.

The CHAIRMAN. It is not given in the testimony.

Mr. BRANDEIS. At the suggestion of Senator Root, I will now introduce for the purpose of calling attention, it is legally already in evidence, but I will introduce it for the purpose of calling attention to the matter, that list as it appears on page 175.

The CHAIRMAN. The whole book is in evidence.

Mr. BRANDEIS. Yes; it will be desirable at the proper place.

Senator ROOT. This schedule on page 175 of the Senate document ought to be printed in connection with this testimony.

Senator PURCELL. And styled the Cunningham Group, so that we can refer to it.

The CHAIRMAN. That schedule is admitted and will be inserted here.

(Schedule is as follows:)

No.	Date of location.	Date of entry and payment.	Locators and entrymen.
1	July 23, 1904	Feb. 26, 1907	Andrew L. Scofield.
2	July 15, 1904	do.	Francis Jenkins.
3	do.	do.	Charles J. Smith.
4	July 23, 1904	do.	Horace C. Henry.
5	July 21, 1904	Mar. 13, 1907	Ignatius Mullen.
6	do.	do.	Henry White.
7	July 20, 1904	do.	Henry W. Collins.
8	July 14, 1904	do.	Fred C. Davidson.
9	July 15, 1904	do.	Michael Doneen.
10	July 23, 1904	do.	Frank F. Johnson.
11	July 21, 1904	Mar. 20, 1907	John G. Cunningham.
12	do.	do.	Clarence Cunningham.
13	July 20, 1904	Mar. 29, 1907	A. B. Campbell.
14	July 19, 1904	do.	Henry Wick.
15	do.	do.	Hugh B. Wick.
16	July 14, 1904	Apr. 11, 1907	Fred H. Mason.
17	July 22, 1904	do.	William E. Miller.
18	August 14, 1904	do.	Charles Sweeney.
19	July 22, 1904	do.	B. C. Riblet.
20	July 14, 1904	do.	Fred Cushing Moore.
21	July 18, 1904	do.	Alfred Page.
22	August 14, 1904	Apr. 23, 1907	W. W. Baker.
23	July 19, 1904	do.	Frederick Burbridge.
24	do.	do.	Reginald K. Neill.
25	July 20, 1904	do.	Joseph H. Neill.
26	July 23, 1904	do.	Miles C. Moore.
27	July 18, 1904	do.	John A. Finch.
28	July 18, 1904	do.	Walter B. Moore.
29	July 18, 1904	do.	Arthur D. Jones.
30	July 15, 1904	do.	Orville D. Jones.
31	July 22, 1904	Oct. 25, 1907	W. H. Warner.
32	August 10, 1904	do.	Frank A. Moore.
33	do.	do.	Nelson B. Nelson.

Mr. BRANDEIS. I asked you how long before that time, the receipt of this telegram, you had been in New York.

Mr. BIRCH. I think I had just about got back there at that time.

Mr. BRANDEIS. And how long prior to the receipt of that telegram was the first conversation which you had with Clarence Cunningham?

Mr. BIRCH. In regard to these coal claims?

Mr. BRANDEIS. Yes; in regard to these coal claims.

Mr. BIRCH. It was the fore part of April.

Mr. BRANDEIS. The early part of April?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Can you tell us how early in April it was?

Mr. BIRCH. I think it was about the 10th or 15th I was out there in Seattle. I go back and forward from New York to Seattle, and I had this talk with Cunningham out there and came on to New York.

Mr. BRANDEIS. What was that talk you had with Cunningham at that time?

Mr. BIRCH. Why, Cunningham told me that of course all the different people who are interested up there did not care about opening up their coal properties themselves, but they were very desirous of having the railroad built in there and opening up the property; and, as we were very anxious to get coal for the operation of our railroad, it was essential to our operation up there to have the coal. And while we did not care particularly to own any coal mines we did want to have some of them opened up; and while no definite proposition was made with Clarence Cunningham—the fact is he never had his people together to talk—they never made any proposition to us, and I had never made any to him.

Mr. BRANDEIS. Up to that time?

Mr. BIRCH. Or not at that time.

Mr. BRANDEIS. I mean up to the time of your conversation.

Mr. BIRCH. Yes, sir; nor at that time did we get down to any talk of any proposition. It was simply general talk. They wanted to open up the property and we were desirous of getting coal; it was necessary in the operation of our railroad.

Mr. BRANDEIS. Yes.

Mr. BIRCH. I told him to get his people together and see what kind of a proposition he could make, and I would take it up with my people. That was about the gist of the conversation.

Mr. BRANDEIS. Well, in this telegram he refers "to perfect organization so proposition can be arranged."

Mr. BIRCH. Well, he had to get them together so as to act as a whole.

Mr. BRANDEIS. What proposition, if any, was then discussed?

Mr. BIRCH. No definite proposition.

Mr. BRANDEIS. It was merely for some arrangement?

Mr. BIRCH. It was simply for some arrangement.

Mr. BRANDEIS. The joint arrangement in connection with the Cunningham claimants?

Mr. BIRCH. Yes, sir.

Mr. MADISON. Now what date was that you had this talk?

Mr. BIRCH. In the fore part of April.

Mr. MADISON. About the first week in April?

Mr. BIRCH. Yes, sir; about the 10th of April—around that neighborhood, I should say. I got back a short time after that and I came right through to New York.

Mr. MADISON. You would not say it was any later than the 10th of April?

Mr. BIRCH. It is possible; I could have left there the 15th of April.

Mr. MADISON. What is your best judgment about it?

Mr. BIRCH. I really couldn't say. My belief is now I had only gotten back from Seattle at the time I received that telegram.

Mr. MADISON. Only gotten back to New York, you mean?

Mr. BIRCH. Only gotten back to New York, I should say. I came right through, and it only takes five days.

Mr. MADISON. What time did you leave Alaska?

Mr. BIRCH. I had not been in Alaska that year, that was 1907.

Mr. BRANDEIS. How long had you been in Seattle—the length of your stay?

Mr. BIRCH. That I could not say. I do not think I was there very long.

Mr. BRANDEIS. I mean where were you, besides Seattle, on that trip—anywhere?

Mr. BIRCH. I do not recollect where. I do not remember being any other place. I think I went right through to Seattle.

Mr. BRANDEIS. You went from New York to Seattle, were in Seattle a certain length of time, and then returned to New York?

Mr. BIRCH. Yes, sir. I was on business there at that time. I went out there in connection with the Northwestern Commercial Company. We were holding some meetings out there.

Mr. MADISON. What time did you leave New York City?

Mr. BIRCH. That I am not certain of.

Mr. BRANDEIS. Will you be able to furnish us the date?

Mr. BIRCH. I think I could; yes. I think I could furnish the exact dates.

Mr. BRANDEIS. I would like to have you do so, later, please, if you will.

Mr. BIRCH. Yes, sir. Give me a memorandum of that afterwards—what you wish.

Mr. BRANDEIS. Yes, sir. Did you make any reply to that telegram?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. Was the next communication of any kind which you had with the Clarence Cunninghams' or anyone representing the Cunningham claims, the letter from Cunningham to you of May 1, 1907, which you have just handed me?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. I will introduce that letter. [Reading:]

THE RAINIER-GRAND HOTEL,
Seattle, Washington, May 1, 1907.

Mr. S. S. BIRCH,
45 Broadway, New York City.

MY DEAR MR. BIRCH: As per my telegram of 23rd instant, you undoubtedly understand why a proposition has not been submitted to you before this, as promised.

In discussing the question with the various parties interested I found such a variance of opinion that I concluded to call a meeting, at which time we can incorporate and pass resolutions that will be effective, whereas should we now submit one to you and have it accepted, we might not be able to "deliver the goods."

As several of our influential people whose consent would be necessary reside in the East, I have set the date of meeting for May 15th, in Spokane, and as soon as that is accomplished you can rest assured I will immediately advise you.

Hoping to hear from you and learn when you intend coming West, I am,

Very truly, yours,

CLARENCE CUNNINGHAM.

Mr. MADISON. What is the date of that, again?

Mr. BRANDEIS. That is dated May 1.

Mr. McCALL. And it refers to the telegram of the 23d instant?

Mr. BRANDEIS. Yes; it refers to that telegram, but evidently means ultimo.

There is on this telegram a mark "E May 8." Does that indicate the date of the receipt, Mr. Birch?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. You mean the mark on the letter, not the telegram?

Mr. BRANDEIS. Yes, sir; the mark on the letter. E and the date of May 8.

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Now, did you reply to that letter?

Mr. BIRCH. No; I went out to Seattle shortly after that.

Mr. BRANDEIS. How shortly after that?

Mr. BIRCH. I was in Seattle the fore part of June.

Mr. BRANDEIS. You were not in Seattle at all during May?

Mr. BIRCH. I do not think so.

Mr. BRANDEIS. What was the first notice which you received of the result of this meeting of May 15 which he tells you had been called?

Mr. BIRCH. I never received any communication from Cunningham. When I went out to Seattle on my way to Alaska I saw Cunningham, and he told me he had been unable to get his people together to make any kind of a proposition, and that he was still at work on it. Well, I couldn't remain around Seattle, and I went on out to Alaska about my business.

The CHAIRMAN. What time was that?

Mr. BIRCH. That was the fore part of June, Senator.

The CHAIRMAN. 1907?

Mr. BIRCH. 1907. And I was gone all year—that was, all of the summer.

Mr. BRANDEIS. Now, I desire, Mr. Chairman, to call the attention of the committee to a paper which is already constructively in evidence as a part of the Cunningham record—that is, the record in the Cunningham case. It is claimants' Exhibit No. 3, and what I have here is a certified copy of that agreement, certified by Commissioner Magee, which I will introduce at this point. [Reading:]

CLAIMANTS' EXHIBIT 3.

Minutes of a meeting of owners of coal claims in Kayak District, Alaska, held at the office of Finch & Campbell, Spokane, Wash., May 15, 1907.

Claim owners present were: Miles C. Moore, Jno. A. Finch, A. B. Campbell, F. H. Mason, Clarence Cunningham, J. G. Cunningham, Charles Sweeney, O. D. Jones, A. D. Jones, M. Doneen, F. C. Davidson, H. W. Collins, Alfred Page, Francis Jenkins, F. F. Johnson, R. K. Neil, Frederick Burbidge, A. L. Scofield.

On motion of Charles Sweeney, Gov. Miles C. Moore was elected chairman of the meeting, and Frederick Burbidge, secretary. The chairman called upon Clarence Cunningham for a statement of the object of the meeting, and Mr. Cunningham stated that he had recently been approached by Mr. E. C. Eccles, representing the Guggenheim Exploration Company, which company is operating mines in Alaska and building a railroad up Copper River, and that Mr. Eccles had expressed the desire to secure coal from the coal field covered by the claims owned by those present at this meeting, and by others for whom he (Mr. Cunningham) had acted as agent. That in his talk with Mr. Eccles several plans had been discussed in a tentative way for the equipment and development of the coal properties, with a view to securing to the Guggenheim Exploration Company a regular supply of coal for their railroad, smelter, and other purposes, these suggested plans being as follows:

1. The Guggenheim Exploration Company to equip and develop the property and to mine the coal for a period of years at a royalty of 15 cents per ton, with a minimum production of 300,000 tons per annum.

2. The claim owners to incorporate a company and deed their claims to it, receiving as consideration therefor one half of the capital stock of such company, the other half of the capital stock to be placed in the treasury of the company, and to be sold to the Guggenheim Exploration Company for a sum sufficient to equip and develop the property (estimated at about \$200,000), and to construct bunkers of a capacity of 5,000 tons at the coast terminal of the railroad. The railroad to contract with the coal company to haul coal from the mines to tide water at a rate not exceeding 50 cents per ton.

3. The coal company to equip and develop the mines and to sell coal to the railroad and exploration company at a fixed price to be agreed upon.

All of these plans contemplate the construction by the exploration company of a railroad to the coal field from a point on tide water at or near the mouth of Copper River.

Mr. Eccles had requested that a proposition be submitted to the Guggenheim Exploration Company along one or other of the lines suggested, and this meeting had been called for the purpose of considering what action should be taken upon said request.

There followed a general discussion of the matter, the conclusions of which were substantially as follows:

1. That the plan first suggested, under which the Guggenheim Exploration Company should mine the coal on a royalty basis, would be an advantageous one to the owners under proper safeguards.

2. That the second plan suggested was not worth consideration.

3. That the claim owners could accomplish nothing while acting as individuals, and that it was therefore desirable to organize a company to take over the coal claims and to carry on the business connected with their operation, sale, or other disposition.

4. That no proposition could be made to the exploration company at present.

Thereupon, on motion of Mr. Sweeney, seconded by Mr. Finch, the chairman was authorized to appoint a committee of five, who should organize a corporation for the purpose of acquiring the coal claims owned by those present and those of such other claim owners as might desire to join the corporation; the committee to secure deeds to the mining claims and to issue receipts therefor, and to take all necessary steps to complete the organization of the company ready for the transaction of business.

The chairman appointed as such committee C. J. Smith, Clarence Cunningham, H. W. Collins, R. K. Neil, Frederick Burbidge.

On motion the meeting adjourned.

FREDERICK BURBIDGE, *Secretary*.

I hereby certify that the foregoing is a true copy of a paper submitted by claimants and received in evidence and marked "Claimants' Exhibit No. 3," in the course of the inquiry conducted by and before me, involving the validity of coal land entries Nos. 1 to 33, inclusive, made in the Juneau land district, Alaska.

Washington, D. C., March 22, 1910.

WM. J. MCGEE, *Special Commissioner*.

Mr. BRANDEIS. Mr. Birch, who is the Mr. Eccles who is referred to in there as making a proposition on behalf of the Guggenheim Exploration Company?

Mr. BIRCH. He is the president of the Copper River and Northwestern Railway Company and vice-president of the American Smelting and Refining Company.

Mr. BRANDEIS. And the American Smelting and Refining Company is what is known as a Guggenheim concern?

Mr. BIRCH. It is commonly reported that way.

Senator FLINT. Should not the name be S. W. Eccles?

Mr. BIRCH. S. W. Eccles.

Mr. BRANDEIS. S. W. is the Eccles. Does the conference which is there referred to, or the suggestion referred to in that report of a meeting with Mr. Eccles, refer to conversations had with Mr. Eccles or conversations had with you as representing Mr. Eccles?

Mr. BIRCH. I think that is more in connection with conversations he had with me. Mr. Eccles was out there at the time.

Mr. BRANDEIS. You mean at the time of that particular conversation?

Mr. BIRCH. Yes, sir; not probably present with Cunningham, and I think I introduced Mr. Cunningham to Mr. Eccles. But the Guggenheim Exploration Company had absolutely nothing to do with it, and that was just talk; that was all.

Mr. BRANDEIS. Just because it was the Guggenheims who were referred to as the persons?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Was Mr. Eccles also present with you at this later conversation in June that you refer to?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. You were known to be acting, to a certain extent, under Mr. Eccles in the management of these Alaska properties, were you not?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Now, what communications in writing were there between this letter of May 1 of Clarence Cunningham to you and the option agreement of July 20, 1907, both of which have been introduced in evidence?

Mr. BIRCH. I know of no communications.

Mr. BRANDEIS. Between them—between the Cunningham syndicate and yourself?

Mr. BIRCH. Between the Cunningham syndicate and myself.

Mr. BRANDEIS. I will also call attention and put into the record the minutes of another meeting, which is a part of the Cunningham record, of which I have also a copy certified to by Commissioner Magee [reading]:

CLAIMANT'S EXHIBIT 4.

Minutes of meeting held on July 16, 1907, in the office of Finch & Campbell, 507 Empire State Building, Spokane, Wash., by the owners of coal claims in Alaska.

Present in person: Messrs. Page, Mason, Jones, Campbell, Finch, Doctor Cunningham, Clarence Cunningham, Doneen, Collins, Moore, O. D. Jones, and Jenkins.

Represented by proxy: Messrs. Davidson, Warner, Henry Wick, Hugh B. Wick, Scofield, Mullen, Nelson, Miles C. Moore, W. B. Moore, Johnson, and White.

After calling the meeting to order, Mr. Finch was selected chairman and Mr. Collins secretary.

Owing to Mr. Wakefield's absence from the city, no report was obtainable of the number of deeds returned to him for deposit with the Union Trust Company, as per request of committee appointed at previous meeting.

A motion was made and carried that two members be added to the committee, a majority of whom would have full authority to instruct the Union Trust Company to make conveyance to a corporation to be formed whenever it is deemed advisable. The chair appointed Messrs. F. H. Mason and A. B. Campbell as additional members of the aforesaid committee.

In stating the object of this meeting Mr. Cunningham reported that he had been requested by the representatives of the A. S. & R. Company to get a definite proposition from the claim owners, to be presented to Mr. Eccles at Salt Lake on the 2nd instant, as they are now in a position where they must have arrangements for coal, and that unless we are ready to act at this time their agent was instructed to negotiate elsewhere for their requirements.

A motion was unanimously carried that the chair appoint a committee of three to go to Salt Lake upon the above date and negotiate the best terms possible for all concerned.

After full discussion and at the suggestion of several of the members present, the chair appointed as said committee Miles C. Moore, A. B. Campbell, and Clarence Cunningham.

All of the members present agreed to ratify any action taken by said committee.

Upon the return of the committee from Salt Lake a full report of their action will be submitted in writing to each of the claim owners.

(Signed) H. W. COLLINS, *Secretary*.

I hereby certify that the foregoing is a true copy of a paper submitted by claimants and received in evidence and marked claimant's "Exhibit No. 4" in the course of the inquiry conducted by and before me, involving the validity of coal land entries Nos. 1 to 33, inclusive, made in the Juneau land district, Alaska.

Washington, D. C., March 22, 1910.

WM. J. MCGEE, *Special Commissioner*.

Mr. BRANDEIS. You were at that time in Alaska?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. And I suppose had no knowledge at that time of the arrangement for that specific date or that particular meeting at Salt Lake?

Mr. BIRCH. No. When I went through Seattle I saw Cunningham; he had not at that time got his people together, and I told him he would have to take it up with Mr. Eccles when he was ready to do business, and he ought to hurry up and do it.

Mr. BRANDEIS. Do you know whether there were any communications, any written or telegraphic communications, between Mr. Eccles and Mr. Cunningham, or anyone else representing the Cunningham claimants, fixing that meeting of July 20?

Mr. BIRCH. I do not know of any. I was in Alaska at the time.

Mr. BRANDEIS. Preliminary to that meeting there was some investigation, legal in its nature, I assume, in relation to these claims. That is a matter, I suppose, Mr. Steele will know about rather than you?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Now, have you certain legal opinions which were obtained in connection with and submitted to the Morgan-Guggenheim syndicate's representative before this option agreement of July 20 was signed?

Mr. BIRCH. That I will refer you to Mr. Steele. He has——

Mr. BRANDEIS. All of those papers?

Mr. BIRCH. Yes, sir.

Senator FLETCHER. Does it appear anywhere where that memorandum of agreement or option was signed?

Mr. BIRCH. Salt Lake.

Mr. BRANDEIS. It appears on its face to have been signed on July 20 in the presence of Mr. Eccles and Judge Lindley, who is an eminent mining lawyer of San Francisco, who represented the Morgan-Guggenheim syndicate.

Senator FLETCHER. The question is, where was it signed?

Mr. BRANDEIS. I think it appears on the document itself.

Mr. BIRCH. It was signed in Salt Lake.

Mr. BRANDEIS. Now, Mr. Birch, you stated that you left for Alaska in June. Had you, yourself, up to that time, made any investigation of the coal field?

Mr. BIRCH. Only in a preliminary way. I visited the coal field twice in 1906. I merely made a preliminary examination to go over the field and see if there was coal as commonly reported.

Mr. BRANDEIS. At what time in 1906 had you examined the field?

Mr. BIRCH. The latter part of June and the fore part of July, and again in the latter part of August, I think it was, that I was in the field.

Mr. BRANDEIS. And was any examination made by you in 1907?

Mr. BIRCH. No, sir. The examination in 1907 was made by Mr. Storrs, a coal expert, who was sent there by our interests.

Mr. BRANDEIS. When was that examination made by Mr. Storrs?

Mr. BIRCH. That was made in the fall of 1907.

Mr. BRANDEIS. How long was Mr. Storrs in Alaska making that examination?

Mr. Steele has called my attention to certain correspondence with which Mr. Birch is apparently not familiar, and which I think it desirable to introduce at this point. This is on the paper of the Guggenheim Exploration Company, 71 Broadway, New York, and is dated August 8, 1907 [reading]:

GUGGENHEIM EXPLORATION CO., 71 BROADWAY,
New York, August 8, 1907.

Mr. STEELE,
(Building):

[Information for Mr. Steele.]

Kindly send word to Mr. Cunningham that Mr. Storrs, our coal expert, with an assistant, will reach Seattle, via Canadian Pacific, night of August 15. Stop at Hotel Butler. Kindly arrange for outfit for both. He will please accompany them to the Katalla coal fields.

Mr. Storrs and assistant have stateroom engaged on the *Yucatan*, sailing August 16.

POPE YEATMAN.

Pope Yeatman—who is that?

Mr. BIRCH. He is the manager of the Guggenheim Exploration Company.

Mr. BRANDEIS. Then there is a telegram of August 8, 1907, which reads as follows:

AUGUST 8, 1907.

CLARENCE CUNNINGHAM, Esq.,
Seattle, Wash.:

Mr. Storrs, our coal expert, with an assistant, will reach Seattle via Canadian Pacific night of August 15. Stop at Hotel Butler. Kindly arrange for outfit for both. Please arrange to accompany them to the Katalla coal fields. They have stateroom engaged on the *Yucatan*, sailing August 16.

(Signed) DANIEL GUGGENHEIM.

And with the notation "Charge M. G. Sons, Alaska Syndicate."

Then there is a letter of August 17, 1907, from Clarence Cunningham to Daniel Guggenheim, on the Rainier-Grand Hotel paper, Seattle [reading]:

THE RAINIER-GRAND HOTEL.
WILSON & WHITE Co., PROP.
CHAS. PERRY, MGR.

SEATTLE, August 17, 1907.

Mr. DANIEL GUGGENHEIM,
76 Broadway, New York City.

DEAR SIR: Replying to your several messages, I beg to advise that owing to the telegraphic situation I have been unable to reply by wire.

Your coal experts have arrived and I will accompany them to the coal fields; our boat for that point, the *Yucatan*, will leave in about two hours.

Referring to your message regarding patents and your request that we have all issued at once: Their issuance is, of course, a matter entirely at the pleasure of the Government and we can not hurry it in any way, although we understand that the Commissioner of the General Land Office has stated that everything will be cleared up inside of ninety days, and as there are no contests in any of our claims, I feel that the patents will be issued in the ordinary course of the department's work.

Thanking you for the promptness with which you have taken hold of this matter. I am,

Yours, very truly,

(Signed) CLARENCE CUNNINGHAM.

Mr. Steele, this refers to several messages, and there is a particular reference here "Referring to your message regarding patents, and your request that we have the same issued at once." Have you a copy of that telegram?

Mr. STEELE. No, I have not, but I remember what it was. It was simply to this general effect, that the counsel in New York did not consider it advisable to purchase the claims as they stood, and asked him to hurry the issuing of patents as much as he could. It was substantially to that effect, but I have forgotten the exact language.

Mr. BRANDEIS. With the permission of the chairman and Mr. Steele, I would like to ask Mr. Steele whether there are not certain written communications, the opinions of counsel, of Judge Lindley, and of Mr. Steele and Mr. Stetson, all of which bear date prior to August 17, 1907?

Mr. STEELE. No. There is one letter from Judge Lindley which bears date July 20, 1907, the date of the optional agreement. There is one other letter from him which bears date August 28, 1907.

Mr. BRANDEIS. I think with your permission, and that of the Chairman, I will read those letters now, Mr. Steele—if there is no objection.

Mr. STEELE. There is one other letter from Judge Lindley which bears date January 3, 1909. The 1909, should be 1910.

Mr. BRANDEIS. That, of course, will be understood.

The CHAIRMAN. As long as there is no objection, I will admit these documents.

Mr. BRANDEIS. I think it would tend to clear the situation to read them at this time, instead of waiting until we ask certain questions.

The CHAIRMAN. It is a little irregular. Mr. Steele has not been sworn yet.

Mr. BRANDEIS. But Mr. Steele has made several suggestions, and I suppose it would aid the committee to have them at this time.

Senator ROOT. Had we better not swear him nunc pro tunc?

Mr. BRANDEIS. Perhaps Mr. Steele had better be sworn, and then if we have any occasion to ask him any questions—

(Thereupon John N. Steele was sworn by the chairman.)

Mr. BRANDEIS. This is a letter from Judge Lindley to Mr. S. W. Eccles, dated July 20, 1907. This, Senator Fletcher, corroborates the testimony as to its being Salt Lake City [reading]:

SALT LAKE CITY, July 20, 1907.

KATALLA COAL PROPERTIES.

Mr. S. W. ECCLES, *Salt Lake, Utah.*

MY DEAR SIR: In submitting to Mr. Guggenheim the proposal of the committee of coal-land owners framed after conference with the interested parties and signed to-day, it may be advisable to explain the embarrassments surrounding the attempt to obtain presently anything in the nature of an option which would bind the property or enable him to enforce a specific performance. Prior to final entry a coal-land claimant is not permitted to make any contract whatever as to its future disposition. After entry he may do so, and if patents subsequently issue his assignee is protected. To obtain large areas of coal upon the public domain by direct purchase, there has to be a number of individuals whose holdings are limited to 160 acres each. So in consolidating coal properties after entry we have to deal with as many men as there are 160-acre units in the proposed consolidation. In the present instance there are 33 factors, with 33 minds of their own. They themselves have appreciated the difficulty in securing concerted action and have devised the plan of conveying to a trust company whose action is to follow instructions from a committee.

Members Campbell, Cunningham, and Moore think that their action taken at the conference here will be ratified by practically all of the entrymen. Should there be any dissent by any of the owners, the effect their nonparticipation will have on the venture will depend on the relative situation of their respective holdings in the composite and the position which they occupy with reference to the general plan of mine development. I do not anticipate that any serious complications will arise even if one or more of the owners should decline to participate.

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About all that can possibly be accomplished at this time, it seems to me, is to secure the signatures of the three gentlemen named as a committee and trust to the moral effect of their action upon the few of their associates who have thus far not conveyed to the trust company.

The gentlemen who have signed the memorandum are first-class men of high standing and large affairs, and I do not doubt that they will secure the cooperation of all or practically all of their associates. I think it safe to proceed with the examination upon the assumption that there will be no nonparticipation whose holdings will materially impede the orderly development of the property.

Sincerely, yours,

(Signed) CURTIS H. LINDLEY.

That examination is the examination referred to in the option?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Which was to be commenced within twenty days?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. The other letter is from Judge Lindley, and is dated San Francisco, Cal., August 28, 1907, to S. W. Eccles, Salt Lake City, Utah [reading]:

SAN FRANCISCO, CAL., August 28, 1907

Mr. S. W. ECCLES,
Salt Lake, Utah.

MY DEAR MR. ECCLES: On the 24th I received your wire of the 23d as follows:

"Your letter of the 17th Alaska coal. Would we be justified in purchasing property on receivers' final receipt regardless dates patents will be issued?"

To which I replied:

"Your wire of 23d. Would not be advisable to accept receivers' receipts Alaska coal without careful investigation of all proceedings leading up to their issuance."

Confirming this I would add that registers and receivers of the federal land office are officers of limited jurisdiction, and as a rule of limited capacity. They are not lawyers nor judges and are not sure-footed. Their work is always carefully scrutinized by the Commissioner of the General Land Office, who has full power to cancel or suspend the receipts and require the commencement of proceedings de novo. A purchaser of titles resting on these receipts is not a purchaser "without notice," but takes such titles with imputed knowledge of all defects in the antecedent proceedings. Irregularities very frequently occur in these proceedings which have to be patched up, leading to embarrassments. The suspension of the veteran certificate and the resulting tangle is a concrete illustration as to what may happen.

On the other hand patents have an "ironclad potency," are conclusive evidence of the regularity of all antecedent proceedings upon which they are based and a purchaser takes his title clear. In such cases we rarely go behind the patent. After the patent issues and is delivered the Land Department loses control of the property and can not recall it. If it goes into equity to vacate it, it must meet and overcome all the presumptions indulged in favor of its validity.

I have found it a delicate matter to deal with and pass on titles to public lands resting in receiver's certificates or receipts, and would much prefer that the patents were issued.

As I said, however, in my letter of the 23d, I do not wish to have it inferred that conveyances made after issuance of final certificates and before patent may not be perfectly good. But the patents are far preferable and relieve the lawyer of a large responsibility in passing upon the regularity of the action of the local land office.

This is all I intended to say in my letter of the 17th which called for your telegram

Yours, truly,

C. H. LINDLEY.

Mr. Steele, have you the telegram of the 23d, or a copy of the telegram of the 23d, from Mr. Eccles to Judge Lindley?

Mr. STEELE. No.

Mr. BRANDEIS. Or have you the original or a copy of the letter of Judge Lindley to Mr. Eccles of the 17th?

Mr. STEELE. No.

Mr. BRANDEIS. I request of Mr. Steele that effort be made to produce those letters, in addition to the other correspondence to which I have referred.

Mr. STEELE. May I make a statement, Mr. Brandeis?

Mr. BRANDEIS. Certainly.

Mr. STEELE. I think in all probability I must have wired Mr. Eccles that I did not think it advisable to take the titles as they stood, but I considered it advisable to wait until the patents issued, and he probably desired to have that confirmed by Judge Lindley.

Mr. BRANDEIS. You will have search made for all the correspondence I have indicated?

Mr. STEELE. I have had search made, but I could not find it.

Mr. BRANDEIS. I understood that Mr. Eccles was ill?

Mr. STEELE. Yes; he is away.

Mr. BRANDEIS. I will ask that later endeavor be made to secure all the correspondence which now appears to be missing.

It appears that in pursuance of the terms of the option agreement of July 20, 1907, Mr. Storrs did go to Alaska?

The CHAIRMAN. Do you offer those papers that you have read in evidence?

Mr. BRANDEIS. I do.

The CHAIRMAN. They are admitted.

Mr. BRANDEIS. Mr. Storrs did go to Alaska with an assistant to make that investigation in the middle of August?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. And how long was he there?

Mr. BIRCH. He was there until some time in October, I think.

Mr. BRANDEIS. And did you accompany him in his investigations?

Mr. BIRCH. No, sir. I was in the interior of Alaska, and later on I came down; I did not go to the Katalla coal field, or the Bering River coal field.

Mr. BRANDEIS. The report which Mr. Storrs made is in writing, I assume?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. And have you that report?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Will you produce it?

(The witness produces report.)

Mr. STEELE. I do not know whether I may address the committee or not?

The CHAIRMAN. Oh, yes. We are not adhering to any fixed rules.

Mr. STEELE. I do not exactly see how this report which was made by our expert to us as to the condition of those coal fields, how it really affects the matter that is before this committee. I have no objection in the world to Mr. Brandeis or any member of the committee reading it, but I should not like to have it made a public document. It seems to me it is a private paper.

Mr. BRANDEIS. I have not examined it myself, Mr. Chairman, but I will, in pursuance of Mr. Steele's suggestion, examine it later—

The CHAIRMAN. It can be left with the committee for our use without printing, if that is agreeable.

Mr. BRANDEIS. I would not like to commit myself on that point, but I will examine it and see if it is important.

Mr. STEELE. Then, I would like, if I have the right to reserve it at this stage, to reserve the right as to whether or not that will be produced for filing. I have no objection in the world, Mr. Brandeis, to

your reading it, or to any member of the committee reading it, but there are important matters in there which concern only us, and nobody else, in regard to this matter, and it seems to me they are private affairs which ought not to be made public.

Mr. BRANDEIS. There have been quite a number of private affairs already made public here, contrary to what was desired, Mr. Steele, it seems to me, but I do not make any request except that I have the liberty to examine it now, and reserve the right to be heard further on the subject of its introduction.

Was there any letter, Mr. Steele, which accompanied the transmittal of this report?

Mr. STEELE. I never saw any.

Mr. BRANDEIS. I notice that the report is dated November, 1907, without any specific date.

Mr. STEELE. I have no knowledge of that, Mr. Brandeis.

Mr. BRANDEIS. Are you able to state, Mr. Birch, at what time in November Mr. Storrs submitted his report to the Alaska Syndicate?

Mr. BIRCH. No, sir; not the exact time. Let me see, wait a minute. It must have been the latter part of November, because his traveling expenses and his bills were put in along the latter part of November and December.

Mr. BRANDEIS. What dates in November and December?

Mr. BIRCH. November 22 and December 23, and then as late as January 28, 1908.

Mr. BRANDEIS. November 22, then, was the date apparently when he returned from Alaska, was it, and submitted a report?

Mr. BIRCH. I should judge so from this memorandum here.

Mr. BRANDEIS. Now, Mr. Steele has produced to me among other papers a copy of a telegram of Daniel Guggenheim and Clarence Cunningham of December 7, 1907. Have you any papers bearing date between the date which we have already considered and prior to this December 7, 1907, telegram?

Mr. BIRCH. No, sir; I was advised in Seattle. I was there at the time this telegram had been sent to Clarence Cunningham and was requested to see that Mr. Cunningham received the telegram.

Mr. BRANDEIS. That was on December 7?

Mr. BIRCH. December 7.

Mr. BRANDEIS. But prior to that time, when you received that notice, you had no communications that have not already been put in evidence?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. I now introduce the following telegram:

NEW YORK CITY, Dec. 7, 1907.

CLARENCE CUNNINGHAM, Esq.,
Seattle, Washington:

I hereby notify you that I finally accept the proposal made to me by A. B. Campbell, Clarence Cunningham, and M. C. Moore, acting for themselves and associates, in the memorandum of agreement of July twentieth, nineteen hundred seven.

DANIEL GUGGENHEIM.

The CHAIRMAN. That is admitted.

Senator PURCELL. What is the date of that?

Mr. BRANDEIS. December 7, 1907. I also introduce the following telegram, dated New York City, December 7, 1907:

NEW YORK CITY, December 7, 1907.

STEPHEN BIRCH,
Care of Northwestern Commercial Company,
Lowman Building, Seattle, Wash.:

Following telegram has been addressed to Clarence Cunningham, Seattle, Wash.:
"I hereby notify you that I finally accept the proposal made to me by A. B. Campbell, Clarence Cunningham, and M. C. Moore, acting for themselves and associates, in the memorandum of agreement of July 20, 1907." Please see that he receives same and addition personally file copy of this with him.

DANIEL GUGGENHEIM.

Now, you have a letter from Mr. Cunningham. What did you do
1 receipt of that telegram from Mr. Guggenheim?

Mr. BIRCH. I saw that Mr. Cunningham received a copy of it, and
then I had a letter there acknowledging it.

Mr. JAMES. Did you deliver it to him?

Mr. BIRCH. Yes, sir; he had one telegram sent to him and I had
his telegram sent to me and saw that he received it, and I took
it and showed it to Cunningham.

Mr. JAMES. What did he say when you showed it to him?

Mr. BIRCH. I asked for an acknowledgment from him and I have
his letter here.

Mr. BRANDEIS (reading):

SEATTLE, December 9, 1907.

R. S. S. BIRCH,
Lowman Building, Seattle.

DEAR SIR: I beg to acknowledge receipt of the following message, on December 7,
from Mr. Daniel Guggenheim: "I hereby notify you that I finally accept the proposi-
tion made to me by A. B. Campbell, Clarence Cunningham, and M. C. Moore, acting
for themselves and associates, in the memorandum of agreement of July 20, 1907."

I have this day advised Mr. Guggenheim of its receipt. I trust that our patents
will soon arrive, so we may take up active development.

Thanking you for your efforts in bringing this matter to my attention, I am,

Very truly, yours,

CLARENCE CUNNINGHAM.

The CHAIRMAN. That is admitted.

Mr. BRANDEIS. Referring now to this passage, "I hope that our
patents will soon arrive so we may take up active development,"
did Mr. Cunningham say anything to you at that time about the
promise which he said the Commissioner of the General Land Office
made in his letter of August 17 that those patents would be issued
within ninety days?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. Was that the first time that you saw Mr. Cunning-
ham after you returned from Alaska?

Mr. BIRCH. I am not positive about that; I may have seen Cun-
ningham in the fall when I came down, but I do not think so. I think
he was in Alaska with Mr. Stores.

Mr. BRANDEIS. Then you have no recollection of having seen him
between June and this December meeting?

Mr. BIRCH. Yes, sir; I think I must have seen him before this
letter; but it was along some time in December, after I had returned
to Seattle from New York.

Mr. BRANDEIS. Do you recall whether at that other time, that
earlier time in December—that is, some time before the 8th or 9th
of December, when you think you saw him—he said anything about
this promise of the Commissioner of the General Land Office that he
should have the patents?

Mr. BIRCH. No, sir; he never mentioned the commissioner's name.

Mr. BRANDEIS. You do not recollect anything of that kind?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. Had you at that time seen that letter or any copy of that letter of August 17 in which he made that statement?

Mr. BIRCH. I have never seen any such letter.

Mr. BRANDEIS. It is one of the letters which was produced by Mr. Steele and which has been put in evidence. You have not seen that even?

Mr. BIRCH. No, sir; not that I know of.

The CHAIRMAN. That is admitted.

The letter of August 17 appears in a former part of the day's proceedings.

Senator FLETCHER. Let me understand you, Mr. Birch. Did Mr. Guggenheim send any telegram, or give any notice of his decision to have these lands examined or investigated within the twenty days provided for in this agreement?

Mr. BIRCH. There has already been introduced in evidence a telegram covering that.

Senator FLETCHER. Within that time?

Mr. BIRCH. Yes, sir; Mr. Stores went up there to make the investigation within that time.

Senator FLETCHER. Then this telegram of December 7, 1907, was within the period limited in the agreement—four months after the decision to make the investigation?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Have you any later communications; that is, any communications or copies of communications between the Alaska syndicate and Mr. Cunningham, or any of his associates, bearing date, or which were delivered or received subsequently to December 9, or the date of the letter of Clarence Cunningham just introduced in evidence?

Mr. BIRCH. No, sir.

Senator FLETCHER. At the time of your conversation with him when you gave him the telegram, did he intimate or signify in any way that he considered that option or memorandum or agreement of July 20, 1907, as not binding, or at an end?

Mr. BIRCH. Not at that time, but later on he did.

Senator FLETCHER. How much later, and when?

Mr. BIRCH. After the first of the year. You see when we first started up there it was considered that they were going to build a railroad from Katalla, which is only about 30 miles from the coal lands, and after experimenting with that and making a thorough examination we concluded not to build there but to go over to Cordova, which is 90 miles distant. That did not suit Mr. Cunningham and his people—that additional haul of the coal—and he told me then, after the first of the year, that he did not think that they had any agreement that was binding between them, and unless we changed our plan of operation he would have to get his people together. He did not consider that we had any agreement.

Mr. BRANDEIS. There was not anything in that contract, Mr. Birch, which bound you to build a railroad to Katalla, was there?

Mr. BIRCH. No; it was generally understood we were not operating over the other place then.

Mr. BRANDEIS. You were not operating it there, were you?

Mr. BIRCH. Yes, sir; we were, down to Katalla.

Mr. BRANDEIS. I mean you were not operating any lines.

Mr. BIRCH. But we spent a lot of money.

Mr. BRANDEIS. You spent a lot of money. When did you stop; when did you come to the conclusion that you could not build?

Mr. BIRCH. In the fall of 1907, in the winter and fall.

Mr. BRANDEIS. You came to the conclusion in the fall, did you not?

Mr. BIRCH. It was during the winter along about November or December. I think it was in October.

Mr. BRANDEIS. In October, 1907?

Mr. BIRCH. Yes, sir.

Mr. MADISON. When Mr. Cunningham told you that he did not consider that there was a binding agreement as to him and his associates, what did you reply?

Mr. BIRCH. I do not think that I replied anything.

Mr. MADISON. You did not concede it?

Mr. BIRCH. I did not concede anything; if we had one, we had one. Now, it was a matter for them to take up later on. They had never even formed their company, never had put their deeds in escrow. The thing was all held up. They did not have their patents. They could not go ahead and do anything, and neither could we.

Mr. BRANDEIS. You were simply waiting for the patents?

Mr. BIRCH. We were waiting until they could form their company and start a mine there to mine coal, and we did not build a railroad over there until we could get coal.

Mr. JAMES. Did he request you to surrender this option?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. This was a mere cursory conversation?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. One that you did not deem of any significance?

Mr. BIRCH. I thought it was pretty significant.

Mr. BRANDEIS. What did you do about it? Did you report it? Was there any letter or telegram or anything of that sort reporting that matter to your superiors?

Mr. BIRCH. I do not know that I wrote about it, but I have spoken about it quite a number of times.

Mr. BRANDEIS. You mentioned it, then?

Mr. BIRCH. Yes, indeed.

Mr. BRANDEIS. When did you first mention it to them?

Mr. BIRCH. I can not remember when, but it must have been along in March when I got back.

Mr. BRANDEIS. In March, 1908?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. When you got back from where?

Mr. BIRCH. From Seattle to New York.

Mr. MADISON. What were your subsequent dealings with Mr. Cunningham about the matter? Was it along the line that the agreement still existed, or along the line that he had given you notice that it was not binding and that he would not comply with its terms?

Mr. BIRCH. Well, there has been no definite action taken by either Cunningham or any of our people.

Mr. MADISON. No; but you men have dealt with each other either on the assumption that the contract which was made was abrogated

or else that it was still in force and effect. Now, what is the fact about that?

Mr. BIRCH. The fact is that we have stopped building that railroad over there until somebody could give us some coal.

Senator ROOT. What railroad do you mean?

Mr. BIRCH. The Copper River and Northwestern Railway. Shall I show it on the map?

Mr. MADISON. No; we know about the situation in a general way.

Senator ROOT. You do not mean the railroad from Katalla?

Mr. BIRCH. We changed our operations from Katalla to Cordova. That was built.

The CHAIRMAN. Let me ask you a question there. That was in the summer of 1907 that you made your movement at Katalla, was it not?

Mr. BIRCH. It was in the fall that we decided to make our change from Katalla to Cordova.

The CHAIRMAN. I mean you started in at Katalla to build a harbor first, did you not?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. To create a harbor there?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And you spent a million dollars or so in that effort?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And you finally came to the conclusion that you could not make a harbor there, and so gave up the scheme of building the railroad from there?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. That is how it came about?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. But at the time of this memorandum of agreement that you have referred to and the negotiations preceding it you had in view building the road from Katalla?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. But at the time they accepted that option, on December 7, 1907, you had already determined that you could not build the road into Katalla because you could not get a proper harbor there?

Mr. BIRCH. Cunningham did not know it, though.

Mr. BRANDEIS. I say that you had decided that you could not.

Mr. BIRCH. I did not decide it.

Mr. BRANDEIS. I do not mean you individually, but the Alaska syndicate.

Mr. BIRCH. Yes, sir.

Mr. MADISON. And you went over to Cordova and began the construction of your road from there?

Mr. BIRCH. There had already been a road started from there, but we moved our operations from there.

Mr. MADISON. And went over to Cordova and began operations from there, and actually built in the direction of the Cunningham claims?

Mr. BIRCH. We built up the Copper River and were going into the copper mines.

Mr. MADISON. But in the direction of the Cunningham claims?

Mr. BIRCH. Apparently; yes, sir.

Mr. MADISON. How many miles did you build?

Mr. BIRCH. We built, I think, only about 20 miles that year.

Mr. MADISON. I mean how many miles have you built up to this time?

Mr. BIRCH. We have got 102 miles of railroad constructed, and that runs up the Copper River, and about 40 miles of that is in the direction of the Cunningham or Bering River coal fields.

Mr. MADISON. And it would be a mere matter now of building a spur road up on your main line up to the Cunningham coal fields?

Mr. BIRCH. Yes, sir.

Senator ROOT. How far?

Mr. BIRCH. About 50 miles, making 90 miles in all.

The CHAIRMAN. The Katalla coal fields are, in a general way, about at right angles to the east or southeast of your Copper River mine, are they not?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. About at right angles in a southeasterly or easterly direction?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. From the main line up the Copper River?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And to connect with that main line over the coal fields you would have to build a branch line 50 miles long?

Mr. BIRCH. Yes, sir.

Mr. MADISON. And it was always your plan, as a matter of fact, whether you built from Katalla or Cordova, to have this road go to both the copper mines and the coal fields.

Mr. BIRCH. It was always our wish, of course, to get in there. That is why we moved our operations from Cordova to Valdez. We would never have gone up there if it had not been for the coal fields; we never would have changed our operations and gone to the expense that we did.

Mr. MADISON. The question is, was it not your general plan or design that this railroad which you were building to tap both fields—coal fields and copper fields?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. Mr. Birch, in building from Cordova to the Copper River, what direction did you build to where you strike the river?

Mr. BIRCH. In a sort of northeasterly direction.

Mr. GRAHAM. From Cordova to the river, I think you strike the river at what is known as the delta, do you not?

Mr. BIRCH. We build right out on the delta.

Mr. GRAHAM. Now, from Cordova to that point you are going almost directly toward the Cunningham coal field, are you not?

Mr. BIRCH. It sort of comes up this way, and then over this way, in a northeasterly direction.

Mr. GRAHAM. And the chairman's description from Cordova to the coal field would bring you—or, rather, from the Copper River Railroad to the coal field would bring you at right angles to the river, is true; that from Cordova to the river you are going directly, or almost directly, toward the coal field, and then you turn at right angles from the road from Cordova to the delta of the river?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. So that it would not be correct to say that from Cordova to the coal fields would be out of the way at all. It would be in a practically direct line, would it not?

Mr. BIRCH. It is the only feasible line—the way we are building.

Mr. GRAHAM. And is it not true that you have a line projected from the delta of the Copper River—that is, from where your line from Cordova to the river strikes—that you have a line projected on to the coal fields?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. And some work has been done on it?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. How much?

Mr. BIRCH. Just 6 miles around Katalla. It would be first built there.

Mr. GRAHAM. How far is it from the delta of the river over to the Cunningham coal claim?

Mr. BIRCH. About 50 miles.

Mr. GRAHAM. Six miles of that is built, you say?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. There has been more work done than that—more than the 6 miles, has there not—that is not completed?

Mr. BIRCH. There might be a little right of way cut out, or something of that sort.

Mr. GRAHAM. How much of it has been surveyed?

Mr. BIRCH. All.

Mr. GRAHAM. Has any preliminary work been done besides the survey?

Mr. BIRCH. When we first started in at Katalla we constructed about 6 miles of railroad out of Katalla in the direction of the Berne River coal field, and it was contemplated to use that 6 miles in the construction of the road over to Cordova.

Mr. GRAHAM. What is the character of the surface from the delta of the Copper River to the coal fields?

Mr. BIRCH. A very large portion of it is boggy.

Mr. GRAHAM. It is a question of grading rather than cutting.

Mr. BIRCH. Most of it.

Mr. GRAHAM. It is not especially difficult to build that piece of road, is it?

Mr. BIRCH. Not from Katalla up to the coal fields.

Mr. GRAHAM. Well, from the delta of the Copper River, where your line strikes the river now, over to the coal fields?

Mr. BIRCH. That is principally filling in.

Mr. JAMES. As a matter of fact, it would cost the Guggenheim company considerably more to build a railroad from Cordova to the mines, would it not?

Mr. BIRCH. Yes, sir; we are spending about \$7,000,000.

Mr. JAMES. What would it have cost them to build it from Katalla.

Mr. BIRCH. About \$2,000,000.

Mr. JAMES. Really \$5,000,000 more?

Mr. BIRCH. Yes, sir.

Mr. JAMES. And you state that it was understood, while it was not embraced in the contract, or the option, that something was said about it, and Cunningham understood that you were to build this railroad from Katalla to the Cunningham coal claims?

Mr. BIRCH. Yes, sir.

Mr. JAMES. Now, as a matter of fact, it would be considerably more expensive, as you have stated, for your company to build it to the other place?

Mr. BIRCH. Yes, sir.

Mr. JAMES. What injury would occur to the Cunninghams by having it built the other way, the cost in transportation?

Mr. BIRCH. The cost in transportation.

Mr. JAMES. How much greater would that be?

Mr. BIRCH. Well, that is a question that I do not know as yet. We have not decided what the rates are to be.

Mr. MADISON. The agreement was to build from tide water, not to build to any particular town, was it not?

Mr. BIRCH. It was all understood at that time that a harbor could be made at Katalla.

Mr. MADISON. But at the same time the language of the contract is that you were to build to tide water?

Mr. BIRCH. Yes, sir.

Mr. MADISON. There was not anything said about a town, about whether it should be from Katalla or Cordova, or that it might be, but that you were to build a railroad to tide water?

Mr. BIRCH. Yes, sir.

Mr. JAMES. Now, under this contract, it would have been possible for you to have built a railroad to tide water, and it would have been to Cordova. It would have been impossible, as a matter of fact—of course, it is not true, and I am merely supposing the case—to have built a railroad to Cordova under this contract or option. They could have required you to have built that road to Cordova, could they not, in carrying out your contract?

Mr. BIRCH. No, sir; we did not obligate ourselves to build a railroad to Cunningham. We did not obligate ourselves to do that at all.

Mr. JAMES. Then, if that is true, there is nothing in his contention that you would have built to Katalla if you did not obligate yourself to do it at all?

Mr. BIRCH. Oh, we were building the railroad in there anyhow, and it was understood at that time that we were going to build to Katalla.

Mr. JAMES. But your statement was that something was said when this contract was made, though it was not expressed, that the railroad was to be built to Katalla. Now, I understand you to say that you did not obligate yourself to build the railroad to the Cunningham coal lands at all.

Mr. BIRCH. We did not obligate ourselves; no, sir.

Mr. JAMES. So the fact that you built to Cordova is not a violation of the contract. Is that true?

Mr. BIRCH. I would not pass on the legality of that. You will have to ask Mr. Steele.

Senator FLETCHER. What element entered into the difference in cost of transportation? You say that would be the question, the difference in cost of transportation. What elements entered into that difference?

Mr. BIRCH. I can not tell you what ran through Mr. Cunningham's mind, or what was in their minds at all, nor can I tell you what the railroad was going to charge. We do not know as yet.

Senator FLETCHER. But you would know what elements entered into the question of the difference of cost of transportation?

Mr. BIRCH. I should say it would be more.

Senator FLETCHER. I know; I am not asking you about that; I am asking you what elements entered into it—the distance or what?

Mr. BIRCH. The distance was one thing.

Senator FLETCHER. What is the difference in the distance between the line running from Cordova to the coal fields and the line from Katalla to the coal fields?

Mr. BIRCH. It is two-thirds farther.

Senator FLETCHER. Two-thirds farther which way?

Mr. BIRCH. To Cordova it is 90 miles—from Cordova to the Cunningham coal fields—and about 30 miles from the Cunningham coal fields to Katalla.

Senator FLETCHER. Would the construction be greater from Katalla to the coal fields than from Cordova to the coal fields; that is, the cost of construction?

Mr. BIRCH. I did not hear your question.

Senator FLETCHER. Would the cost of construction be greater from Katalla to the coal fields than from Cordova to the coal fields?

Mr. BIRCH. It is less—the cost of construction from Katalla to the coal fields than from Cordova to the coal fields.

Mr. McCALL. You stated the gross cost to be about \$5,000,000 or \$7,000,000 from Cordova and \$2,000,000 from Katalla.

Mr. BIRCH. It has cost us so far about \$5,000,000, and it will cost \$2,000,000 to build a branch over there. It would cost about \$2,000,000 to have built from Katalla up there—that is because of the heavy rock work which we have around Cordova and heavy steel bridge across the Copper River.

Mr. GRAHAM. But, Mr. Birch, you would build from Cordova up the Copper River, regardless of the coal fields, would you not?

Mr. BIRCH. No, sir; we would not.

Mr. GRAHAM. Did you not build up to the copper mines there, anyhow?

Mr. BIRCH. We would have gone from Valdes.

Mr. GRAHAM. You did, however, build from Cordova to the Copper River and then up the Copper River to the Bonanza mines?

Mr. BIRCH. No, sir.

Mr. GRAHAM. Where did you go to?

Mr. BIRCH. We did not start to build from Cordova until after we had investigated the coal fields.

Mr. GRAHAM. After having built from Cordova to the delta of the Copper River the question of expense then would simmer down to the comparative expense of building from the Copper River to the coal fields or from Katalla to the coal fields. Is that not it?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. What would be the difference in cost of building from the delta of the Copper River to the coal fields and the cost of building from Katalla to the coal fields; which would cost more, and about how much?

Mr. BIRCH. Oh, about the same. There is very little difference.

Mr. GRAHAM. So that having built from Cordova over to the Copper River there would be no great difference in the cost of building from that point to the coal fields, or of carrying out the original purpose of building from Katalla to the coal fields?

Mr. BIRCH. We were at that same time, as we were building or investigating Katalla—no; I might say, before that, we had been building out of Valdez, and our attention had been called to the coal fields belonging not to Cunningham or any individual, but it was

said there was coal down there. I went into the field in 1906 for the purpose of ascertaining if there was coal there, and our engineers were investigating the different railroad routes. We concluded that there was a great deal of coal in the Bering River coal fields, and, taking everything into consideration and the gradings of the Copper River, and centralizing our operations, that it was best to find some central point where we could get to the coal fields and up Copper River. We started to build from Katalla and spent considerable money there, and that did not prove successful, and we concluded that the only harbor was at Cordova, and we moved our operations over there in the fall and winter of 1907 and 1908.

Senator PURCELL. Mr. Birch, did you have any interests on the Copper River other than coal fields?

Mr. BIRCH. We never had any interests in the coal fields. We have copper mines up the Copper River, in the Chitina Valley.

Mr. JAMES. I understand section 7 of this option which was given to the Morgan-Guggenheim syndicate by Campbell, Moore, and Cunningham provides that—

Said corporation shall enter into an agreement giving to said Guggenheim or his nominee the exclusive right to purchase for the period of twenty-five years the entire "run-of-mine" coal mined from said property, or so much thereof as said Guggenheim or his nominee may require or demand, for the sum of \$2.25 per ton of 2,240 pounds. The coal is to be delivered at the mine either in bunkers to be provided by the corporation for that purpose or upon cars, as said Guggenheim or his nominee may direct. Said Guggenheim or his nominee shall use their best endeavors to make a market for the coal in Alaska and in the ports and cities of the United States, to the end that as large a quantity of coal as possible may be mined. Said Guggenheim or his nominee shall agree to purchase all coal which they may require for use or sale from said corporation.

Now, is it not true that under this agreement the gentlemen sold to the Morgan-Guggenheim syndicate the entire output of that mine for \$2.25 per ton delivered at the mine?

Mr. BIRCH. The company which was to be formed would do that.

Mr. JAMES. Now, then, if that is true, what complaint, if they were to deliver this coal at the mine upon cars there, could the Cunningham people have that you had to haul it two-thirds farther.

Mr. BIRCH. Well, we have got to compete with the market where there is a low price of coal, and any additional haul of that coal is bound to put a higher price on it. Now, if you are going to haul it 90 miles, or whatever it may be, you have got to compete, and that will add to the cost of that coal before it comes to the market.

Mr. JAMES. They have nothing to do with that.

Mr. BIRCH. They were very desirous, because we only took what we wanted.

Mr. JAMES. You took the output of the mine under this contract.

Mr. BIRCH. We agreed to take what coal we wanted.

Mr. MADISON. And you had the right to take it all?

Mr. BIRCH. Yes.

Mr. JAMES. At \$2.25?

Mr. BIRCH. A market has got to be found for the coal and it is worth nothing as it is there; the coal is worth nothing without transportation. Now, naturally, Cunningham and those people are desirous of having a market found for it.

We investigated the situation and came to the conclusion that there was only one way to build that road up there, and that was to Cor-

dova, and Cunningham maintains to this day that a harbor can be made down Controller Bay and Katalla. There are some people trying to operate there now. They say they are going to build railroads.

Mr. MADISON. Does he claim to-day that this contract has been abrogated?

Mr. BIRCH. Yes, sir; he does to me.

Mr. MADISON. Has he insisted to the Morgan-Guggenheim syndicate that it has been abrogated, and that he and his associates want to stand by it because of this change in the railroad proposition?

Mr. BIRCH. That is one of the excuses he gave.

Mr. MADISON. He does assert to-day that it has been abrogated and set aside?

Mr. BIRCH. Yes.

Mr. MADISON. Do you people assent to that?

Mr. BIRCH. I do not know what we have assented to. We have not done anything.

Mr. STEELE. I think Mr. Birch misunderstood your question. I think your idea was whether the associates of Mr. Cunningham had given any formal notification to the Guggenheims that this agreement was at an end, for this reason or for any other reason. I want Mr. Birch to be clear on that.

Mr. MADISON. I did not put it in that way exactly; but I will ask Mr. Steele as to whether any formal notification has been given that the contract is forfeited by reason of your action with regard to the railroad, or any other matter.

Mr. STEELE. There has never been any formal notification received by the syndicate.

Mr. MADISON. Then, after all, this complaint of Cunningham's amounts to nothing more than a personal protest on his part.

Mr. STEELE. You are asking me a question that I can not answer. I regard it as the position which they have taken and in which they propose to remain.

Mr. MADISON. And what position do you folks occupy, that the contract is binding, or do you admit that you have, in fact, forfeited by your change any right on any other matter?

Mr. STEELE. That is quite an awkward question to put to me.

Mr. MADISON. Mr. Steele, I understand, as a lawyer, what it means when a lawyer answers that way, that he has not conceded the other fellow's position and that he does not concede the forfeiture, and he may have a reason for insisting on the contract being carried out. I do not ask for any further answer.

Mr. STEELE. We have never had any formal communication of any kind or description with those gentlemen regarding the question of forfeiture of that contract. We have understood for quite a while back, since the spring of 1908—although there has never been any formal notification—that those gentlemen regarded that contract at an end because at the time it was made there was the understanding, and the work was actually progressing, that there should be a harbor, and a terminus to tide water at Katalla, and afterwards, when that was changed, in the fall or winter of 1907, then they considered the agreement was at an end, and they were no longer bound by it. We never took that up with them.

Mr. MADISON. But this is the language of the contract, section 9:

The corporations shall convey to such railroad companies as may be designated—

The corporation meaning the corporation formed there in Washington—

shall convey to such railroad companies as may be designated by said Guggenheim, and which shall construct a railroad from tide water to said mines.

Mr. STEELE. Yes, sir.

Mr. MADISON. That is the language of the contract. It is clear and it is unmistakable, and if there was any outside agreement as to Katalla or any other place not put in writing of course we understand as lawyers that it could not affect this.

Mr. STEELE. My position there is that there is not anything in that agreement that compels us to build a railroad to any place or from any place.

Mr. MADISON. That language is pretty strong, is it not.

Mr. STEELE. No, sir; I do not think so.

Mr. MADISON. Well, we will not go into that. I think we are taking too much time about it. But this language is "and which shall construct a railroad from tide water to said mines." It is very possible—

Mr. STEELE. Is there not something just ahead of that?

Mr. MADISON. There might be considerable controversy about that matter, but at the same time it looks to me that a fair and square interpretation of the contract would be that you gentlemen bound yourselves to build the railroad.

Mr. STEELE. We are actually doing it, and intended to do it at that time.

Senator ROOT. I want to ask a question. Mr. Birch said, I think, something about a corporation which is contemplated in this 20th of July option. Do you know whether any such corporation was ever formed?

Mr. STEELE. Not to my knowledge. I never heard of it.

Senator ROOT. The option provides for a conveyance by these various entrymen of their different entries to a trust company. Do you know whether that has been done?

Mr. STEELE. I do not. The only information I have on that subject is what is said in Judge Lindley's letter which was read by Mr. Brandeis.

Mr. VERTREES. If I may be allowed to ask a question—

Mr. BRANDEIS. I would like to ask some questions myself.

The CHAIRMAN. It is now a quarter to 1 o'clock and the committee will take a recess until 2 o'clock.

(Accordingly the committee at 12 o'clock and 45 minutes p. m. took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled after recess at 2 p. m.

The CHAIRMAN. The committee will please come to order. I have a stipulation here from the attorneys on both sides as to the date when Mr. Oscar Lawler became Assistant Attorney-General and it will be put in the record if there is no objection.

Mr. BRANDEIS. May I ask what the date is; it is a matter which I suppose Mr. Pepper has arranged?

The CHAIRMAN. It was confirmed April 5, 1909.

2158 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

Mr. BRANDEIS. Mr. Chairman, since recess Mr. Sleman has called to my attention—

The CHAIRMAN. This will go into the record.
(The stipulation is as follows:)

WASHINGTON, D. C., *March 25, 1910*

STIPULATION.

It is hereby stipulated and agreed that the attached letters, dated March 22 and March 23, 1910, relative to date when Mr. Oscar Lawler became Assistant Attorney-General for the Department of the Interior, may be filed with the joint committee of investigation and printed as a part of the record in the case.

G. W. PEPPER,
NATHAN A. SMYTH,
Attorneys for Gifford Pinchot.
JOHN J. VERTREES,
CARL RASCH,
Attorneys for R. A. Ballinger

[Law offices of Nathan A. Smyth, Hanover Bank Building, 5 Nassau street, New York. Telephone 134 Rector.]

NEW YORK, *March 22, 1910.*

JOHN J. VERTREES, Esq.,
New Willard Hotel, Washington, D. C.

MY DEAR MR. VERTREES: On Friday morning, we shall desire to place on record the exact date when Mr. Lawler became Assistant Attorney-General for the Interior Department. Can you ask Mr. Finney or some one to ascertain the fact, so that we can put it in by concession?

Very truly, yours,

NATHAN A. SMYTH.

DEPARTMENT OF THE INTERIOR,
Washington, March 23, 1910.

MR. NATHAN A. SMYTH, *Washington, D. C.*

MY DEAR MR. SMYTH: In reply to your letter of March 22, 1909, asking when Mr. Lawler became Assistant Attorney-General for the Department of the Interior, I have to advise you that Mr. Oscar Lawler served as United States attorney for the southern district of California from January, 1906, until March 31, 1909. After his resignation and until confirmation of his appointment as Assistant Attorney-General for the Department of the Interior he was present in and working for the Department of the Interior without compensation. His appointment as Assistant Attorney-General was confirmed by the Senate April 5, 1909.

Very respectfully,

E. C. FINNEY.

TESTIMONY OF S. S. BIRCH—Resumed.

Mr. BRANDEIS. Mr. Sleman has called to my attention the reply of Mr. Ballinger and the other members of the Interior Department to my call for documents on March 21, which have been received during the course of the morning, and I think it would be a convenience to the committee if the replies and accompanying documents were printed in connection with the call itself. I stated this morning that it had not been received—with a subsequent note later on in the day that it had been received—I think they should be printed immediately following the call, and I will then hand them to the stenographer.

(The papers referred to appear in an earlier part of to-day's record.)

Mr. Birch, I was asking you in regard to the statement in the letter of August 17, 1907, namely, the letter of Clarence Cunningham to Daniel Guggenheim, namely:

Referring to your message regarding patents and your request that we have same issued at once, their issuance, of course, is a matter entirely at the pleasure of the Government, and we could not hurry it in any way, although we understand that the Commissioner of the General Land Office has stated that everything will be cleaned up inside of ninety days, and as there are no contests in any of our claims I feel that the patents will be issued in the ordinary course of the department's work.

The commissioner at that time was Mr. Ballinger, was he not?

Mr. BIRCH. I do not know, sir.

Mr. BRANDEIS. Did you not know who the land commissioner was in the summer of 1907?

Mr. BIRCH. I was in Alaska all that summer.

Mr. BRANDEIS. But you were in the States, were you not, from March on?

Mr. BIRCH. Yes, sir; but I do not think I could actually say whether he was commissioner or not.

Senator ROOT. We know, Mr. Brandeis, that he was.

Mr. BRANDEIS. I understand, Senator, but I would like to know what this witness knows.

Mr. BIRCH. I do not know whether he was commissioner or not.

Mr. BRANDEIS. You stated that you had never before heard any reference to this matter until I referred to it in the testimony to-day; is that a fact?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. You never saw this letter that Mr. Steele gave me?

Mr. BIRCH. Not that I know of; no, sir.

Mr. BRANDEIS. Now, Mr. Birch, you were asked about what had been done, in building, and by Mr. Graham particularly, as to what had been done in respect to the construction of this road toward the coal field and you referred later to the fact that 6 miles of the road had been constructed, and you were asked whether other work had been done, and I understood you to say some surveys had been made. Is that correct?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Well, is that all that had been done?

The CHAIRMAN. I suppose you mean to the coal fields, Mr. Brandeis?

Mr. BRANDEIS. Yes, sir. This has special reference to that part of the railroad which branches off, as I understand it, toward the coal fields.

Mr. BIRCH. During the season of 1907 you are referring to now?

Mr. BRANDEIS. Are you referring to anything done on that road since that time?

Mr. BIRCH. We have been building several roads up there.

Mr. BRANDEIS. No; I am referring to that portion of the road of which you say 6 miles had been constructed.

Mr. BIRCH. That was built from Katalla in the direction of the coal fields.

Mr. BRANDEIS. Now, what else was done on that portion of the road of which this 6 miles is a part?

Mr. BIRCH. Attempting to build a breakwater.

Mr. BRANDEIS. What else?

Mr. BIRCH. And surveys; possibly cleaning out the right of way.

Mr. BRANDEIS. Now, I refer you to the statement of S. W. Eccles, he was president of the railroad?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Which appears in the letter addressed, December 14, 1908, to the Hon. Fred Dennett, Commissioner of the Land Office, and which is printed in the statement made by you before the Territories Committee on February 19, at pages 97 to 99, and at the bottom of the page is this statement:

Of the Copper River and Northwestern Railway, owing to the matter hereinbefore set out, only about 6 miles have been actually constructed, although a large amount of grading and excavation on the proposed line to the Bering River coal fields has been done.

That is true, is it not?

Mr. BIRCH. That was in the direction. The other grading was in the direction of the Copper River. There was very little done from Katalla up to the coal fields. That is where the 6 miles is constructed.

Mr. BRANDEIS. Then the statement of Mr. Eccles is not exactly true, is that what you would have the committee understand?

Mr. BIRCH. No, indeed, I would not.

Mr. BRANDEIS. Look at that statement there now and see whether what you now say is a correct statement—Mr. Steele you have that letter here, or a copy of it?

Mr. STEELE. Yes, sir—oh, no, not the letter itself; this is a report filed with the Land Office.

Mr. BIRCH. That is correct. There were a number of buildings constructed at the terminal grounds and there were some excavations made, but there was no actual railroad constructed other than this.

Mr. BRANDEIS. I did not ask you that. I asked you whether only surveys had been made and called your attention to the fact that Mr. Eccles said, "Only 6 miles has been constructed, although a large amount of grading and excavation on the proposed lines of the Bering River coal fields has been done." Is that correct or is it not correct?

Mr. BIRCH. That is correct.

Mr. BRANDEIS. That is something more than surveys, is it not?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Now, Mr. Birch, what is the value of this Cunningham coal property?

Mr. BIRCH. To-day, it has no value.

Mr. BRANDEIS. You mean to say it has no value, or it is only valuable when patents are issued and you have transportation?

Mr. BIRCH. I mean to say that at the present time the coal in that ground is worth nothing.

Mr. BRANDEIS. Why is it worth nothing?

Mr. BIRCH. Because there is no transportation and there has got to be a market found for it.

Mr. BRANDEIS. Now, assuming that there is transportation, what is the value of the coal in those fields?

Mr. BIRCH. That is all problematical. At the present time you can not tell what it is going to cost to mine that coal.

Mr. BRANDEIS. Is it more problematical than it was when you testified before the Committee on Territories on February 18 and 19?

Mr. BIRCH. We were discussing the Cunningham coal contract and assuming that the cost of the coal would be \$1.75 and they could sell it for \$2.25, then there would be that value.

Mr. BRANDEIS. I asked you whether it is any more problematical it was then?

Mr. BIRCH. Not a bit.

Mr. BRANDEIS. I call your attention to certain statements which you made then, appearing on pages 130 and 131 of the printed record of the testimony on February 19 [reading]:

Senator FRAZIER. You said, I believe, a while ago, that you estimated that there were 50,000,000 tons in the tract of land embraced in this option.

That is true, is it?

Mr. BIRCH. Yes, sir. I did not estimate it, but that is the report of our engineer, Mr. Stotts.

Mr. BRANDEIS. His report is not that there was 50,000,000, but that it was safe to say that there was at least 50,000,000, is it not?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS (reading):

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Which your Alaska syndicate acquired from Cunningham & Co.?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. After your investigation, did you conclude that that is the most valuable part of that coal field?

Mr. BIRCH. No; I would not say that that was the most valuable part of it. It is about the center of the coal field, but there are a great many sections there that are equally as valuable as that.

Is that the report of your expert?

Mr. BIRCH. That is my understanding.

Mr. BRANDEIS. Is it not a fact that he singles out this Cunningham field as being the most valuable part, having reference not only to the quality of the coal, but also to the ease of mining and the ability to reach it by the railway?

Mr. BIRCH. I do not know that he picks it out as the very best portion of the field, but he speaks very favorably of it.

Mr. BRANDEIS. Then again [reading]:

Senator FRAZIER. What is the average thickness of your vein or veins in this 5,000-acre tract on which you have the option?

Mr. BIRCH. Well, they might average 10 or 12 feet. But some of them run up as high as 40 feet; but they roll and pinch, you know, in various places. Some are only 4 feet wide.

Some are even more than 40 feet, aren't they?

Mr. BIRCH. Not for any length. I never heard of them going over 40 feet.

Mr. BRANDEIS. Is there not one of 60 feet which Mr Rogers called the attention of Secretary Garfield to?

Mr. BIRCH. He is mistaken. It dips that way, and this crosscut, it dips at 45, this crosscut running across there that way would make it about 60-odd feet, but the actual width of the vein is only about 40 feet; but this crosscut in there would show considerable coal.

Mr. BRANDEIS. That is your explanation of Mr. Rogers's estimate of the 60 feet of vein?

Mr. BIRCH. That is the only place Mr. Rogers could have seen it; the same place that I saw it.

Senator FLETCHER. On page 129, Mr. Birch, you were asked this by the chairman:

The CHAIRMAN. In a general way, regardless of your interests or anybody else's interests, assuming a railroad to be built so that it could get to market, the market of which you spoke, what would you say this 500,000,000 tons of workable coal now in sight in this particular coal district would be worth?

And your answer was:

About 50 cents a ton.

Is that correct?

Mr. BIRCH. That is correct, assuming that the coal could be mined for \$1.75 and sold for \$2.25, which is the point we were discussing at that time in the Cunningham contracts.

Senator FLETCHER. The question assumes there all that it purports to assume, as I take it, and your answer is very distinct. I want to know whether your answer is correct or not.

Mr. BIRCH. It is correct, on the assumption that I have just stated. That is what I had in mind when I answered that.

Mr. OLMSTED. It appears from the next question and answer.

Mr. McCALL. The next two questions.

Mr. JAMES. Do you estimate that there are 500,000,000 tons of coal there?

Mr. BIRCH. I beg your pardon.

Mr. JAMES. Do you estimate there are 500,000,000 tons of coal there?

Mr. BIRCH. Yes, sir. That is based on the information furnished me by engineers that have been in the field, that the Cunningham group would be about one-tenth of the field, and that being 50,000,000 tons, the field would contain about 500,000,000 tons of coal.

Mr. GRAHAM. Mr. Birch, at that point, please let me ask a question. I suppose you are familiar with the report of your examination before the Senate Committee on Territories now in your hands—you have read it, have you?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. And the statements you make there are correctly reported as you made them?

Mr. BIRCH. I would hardly say that. At the time we were discussing this contract, Senator Beveridge was not clear in his mind as to the difference between the \$1.75 and the \$2.25, and he said to the stenographer, "Never mind for a moment, I want to get it clear in my mind this difference in the prices. I did not have an opportunity to go over Mr. Birch's testimony yesterday, but I have on hand some notes here and I would like to be clear on that." We got into a discussion and we discussed at that time this Cunningham coal contract and the difference in these prices, then the conversation went on and I had that in mind and nothing else.

Mr. GRAHAM. I do not want to take time with it now, but I do want to have a clear understanding about it. In the first place, we have been informed that you were not sworn on that occasion.

Mr. BIRCH. No, sir.

Mr. GRAHAM. Now, would you go over this, if you have the opportunity, and let us know what corrections you want to make in it so that we might, with those corrections, take the statements here as your testimony?

Mr. BIRCH. Yes, sir; I could do that. You mean at some other time?

Mr. GRAHAM. Before you leave town. Personally I will be obliged if you will do that. Then we would have an authorized statement here, subject to the corrections you wish to make, as to what you have to tell us about this matter.

Mr. BIRCH. I will see that you get the proper corrections.

Mr. BRANDEIS. I think, Mr. Chairman, in view of that, that it would be well to suspend Mr. Birch's examination and examine Mr. Steele.

The CHAIRMAN. In view of what, I was not listening?

Mr. BRANDEIS. Mr. Graham suggested or requested Mr. Birch to examine the testimony which he has given before the Senate Committee on Territories, with a view to determine what, if any, changes in that testimony he desires to make, and that after he had done so, to state here exactly what corrections he wished to make.

The CHAIRMAN. It seems to me he could go on and testify here and make any corrections—there is no occasion for that, you could go on and examine him.

Mr. BRANDEIS. I think Mr. Graham ought, perhaps, to be heard on that.

Mr. GRAHAM. Mr. Chairman, the thought in my mind was this: There is a great deal of information in the published pamphlet which we have, Senate Document No. 5436, which I think is apropos, but it was not given under oath, and there is so much of it it would take a great deal of time to read it to the witness or to have him go over the same ground and make any corrections that he might feel like making, because he is now under oath, and was not under oath at that time. I would like to know, for my part, what changes he wishes to make in it. We could then make such use of it as we saw fit as part of the testimony in this case.

Mr. MADISON. You have read it over carefully, Mr. Birch?

Mr. BIRCH. Because I am under oath now and was not under oath there would not make any difference at all. Now, in discussing that contract I had that in mind. That was the occasion for bringing up this 50 cents. Now, assuming that you could mine the coal for \$1.75, and on the face of it there was a contract to sell it for \$2.25 to Daniel Guggenheim, that meant 50 cents. We were discussing that. There is no other changes which I care to make in the body of that report, and I do not see any reason why I should not go on here. I have got a lot of business to attend to back in New York, and I would like to get through with this thing.

Mr. GRAHAM. Would it be fair to consider the statements in this Senate document 5436 as your testimony, on the ground covered in it?

Mr. BIRCH. There seems to be a misunderstanding. Had I realized at the time that I was talking to a press gallery I might have been a little more careful in what I said.

Mr. GRAHAM. This is not a press-gallery report.

Mr. BIRCH. Apparently it has been, because it was published in all the newspapers throughout the United States.

Mr. GRAHAM. This report, I suppose, was made by the stenographer to the committee, and reported and printed under government supervision.

Mr. BIRCH. Yes; but it has been used.

Senator ROOT. Couldn't you tell us now what explanation or change you want to make in this testimony in order to have it—

Mr. BIRCH. Yes, sir; in a very few minutes.

Senator ROOT. Tell what it is—any explanation you wish to make

Mr. BIRCH. I do not wish to have the impression go out that that coal is worth 50 cents a ton in the ground. The coal as it is is worth nothing. There has got to be transportation; there has got to be a market found for it. If you take those figures alone, without the further testimony there that I have given, where I distinctly say that it has no value, it would create a wrong impression. And there is no more sense in those figures than to take these figures: "The \$50,000 which the Government would receive, and have received, for those Cunningham coal claims, put aside at 5 per cent interest, the accumulated compound interest at the end of the period that it would take to mine out that coal, based on the present consumption of Alaska and the amount of coal used by the United States Navy on the Pacific Ocean, would amount at the end of that period to \$860,112,673." Now, there is as much sense in those figures as to put that valuation upon that coal field.

Senator SUTHERLAND. What period do you fix for that?

Mr. BIRCH. That is two hundred years. These figures have been audited by competent auditors.

Senator ROOT. Now, with that explanation, is this testimony that you gave before the Committee on Territories correct?

Mr. BIRCH. Yes, sir. I would like to submit these figures.

The CHAIRMAN. They will go in with your testimony.

(The figures are as follows:)

Fifty thousand dollars computed at 5 per cent compound interest for two hundred years would produce in that time \$867,112,673.28:

Principal.....	\$50,000.00
14 years 74 days.....	100,000.00
28 years 148 days.....	200,000.00
42 years 222 days.....	400,000.00
56 years 296 days.....	800,000.00
71 years 5 days.....	1,600,000.00
85 years 79 days.....	3,200,000.00
99 years 153 days.....	6,400,000.00
113 years 227 days.....	12,800,000.00
127 years 301 days.....	25,600,000.00
142 years 10 days.....	51,200,000.00
156 years 84 days.....	102,400,000.00
170 years 158 days.....	204,800,000.00
184 years 232 days.....	409,600,000.00
198 years 306 days.....	819,200,000.00
199 years 306 days.....	860,160,000.00
200 years.....	867,112,673.28

Senator PURCELL. You recommended the making of this contract, did you not, between the Cunninghams and your people?

Mr. BIRCH. No, sir; I was not in the United States at that time.

Senator PURCELL. Well, but you knew of the contract, or you knew of the proposal?

Mr. BIRCH. I did not know the gist of it. I knew that I was desirous of having some contract between the Alaska syndicate and the Cunningham people.

Senator PURCELL. And it was through your efforts that they were brought together, was it not?

Mr. BIRCH. Very largely.

Senator PURCELL. Now, did you feel that you were asking your people to pay \$250,000 for nothing?

Mr. BIRCH. Let me understand that again.

Senator PURCELL. If you say that the coal is worth nothing, as it stands there, did you feel that you were doing right in asking your people to pay \$250,000 for nothing?

Mr. BIRCH. That \$250,000, you understand, was to go in as working capital to get out that coal.

Senator PURCELL. Very true.

Mr. BIRCH. Cunningham did not receive that money.

Senator PURCELL. That is very true, but you were then getting what for it—nothing?

Mr. BIRCH. Why, certainly we were going to get this for it—we were going to get the opportunity of opening up these coal fields, which was essential to the operation of our railroad.

Senator PURCELL. And you were doing that because you believed there would be a value to them; that they were of some value at that time?

Mr. BIRCH. They would be some day, yes, sir; valuable to us as to hauling out the coal and also in the operation of our railroad.

Mr. OLMSTED. Mr. Birch, if I understand you, assuming that 50 cents a ton profit could be made on the mining of this coal, it would take two hundred years to get the 50 cents, or to get the last of it; is that your idea?

Mr. BIRCH. Yes, sir; assuming it cost \$1.75 to mine and you could sell it for \$2.25.

Mr. OLMSTED. Your thought is, in ascertaining the present value, you should ascertain that amount which, at 5 per cent interest, would in two hundred years produce 50 cents profit?

The CHAIRMAN. Oh, no. Five per cent of the cost of the land at \$10 an acre, as I understood his figures.

Mr. BIRCH. Those figures are the amount of money that the Government has already received from the Cunninghams for these coal lands, which is \$10 an acre. Now, if that was put aside at 5 per cent interest, at the end of the period in which that coal would be exhausted, based upon the present consumption in Alaska and the amount of coal that is now used by the United States Navy on the Pacific ocean, the two together, would amount to \$867,112,673.28; that is what the Government would have at the end of that time.

The CHAIRMAN. In two hundred years?

Mr. BIRCH. Two hundred years.

Mr. McCALL. Mr. Birch, the estimate is made there, I notice, of \$1.75 a ton for mining?

Mr. BIRCH. Yes, sir.

Mr. McCALL. Have you investigated the question of the cost of mining so that you know whether or not that would be reasonable?

Mr. BIRCH. I think it is very doubtful if the coal can be mined for that at first. Our engineers report even higher than that. Some up to \$1.80 and some cents and even \$1.90. Now, that is all problematical. No operations have been carried on in that field and we do not know. The fact of it is these whole estimates are all assumed—even as to the tonnage.

Mr. JAMES. This estimate you brought here, how many experts did you have at work on that figuring up the interest on \$50,000 for 200 years?

Mr. BIRCH. Let me see, there was the auditor, the comptroller, one bank, and the main bookkeeper—four people. I asked them to verify these figures so there would not be any mistake about it.

Mr. JAMES. How long did it take them?

Mr. BIRCH. Not very long. In fourteen years and seventy-four days, at 5 per cent, it doubles.

Senator ROOR. It did not take them fourteen years to make up this statement?

Mr. BIRCH. No, sir.

Mr. JAMES. They went over that with a great deal of care, though!

Mr. BIRCH. Yes, sir.

The CHAIRMAN. How many miles of road have you built up the Copper River?

Mr. BIRCH. One hundred and two miles.

The CHAIRMAN. You started from Cordova Bay?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Then you bridged across the delta of the Copper River toward the east?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Then you came up on the east side and bridged between Miles and Childs glaciers?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And came out on the west side?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Now, how much farther have you to build up to the Bonanza mine on the Chitina from the terminal?

Mr. BIRCH. Ninety-seven miles.

The CHAIRMAN. Ninety-seven miles before you reach the copper?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. How far from the mouth of the Chitina, about?

Mr. BIRCH. It would be about 30 miles more from the work we have finished now.

The CHAIRMAN. From your present terminus?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Now, where do you get your coal you are using on your railroad in operating and carrying on your railroad. Where do you get your supply of coal for that?

Mr. BIRCH. From British Columbia.

The CHAIRMAN. You get British Columbia coal and can not get this coal close by your doors?

Mr. BIRCH. Yes, sir. If you will please excuse me, I would like to show you some figures of what it is costing us.

The CHAIRMAN. Well, give us the figures.

Mr. BIRCH. Now, we used in the construction of the railroad from January 1 to November 20, 1909, 16,226 tons. That cost us at Cordova on an average of \$11.88 a ton.

The CHAIRMAN. Was that British Columbia Vancouver coal?

Mr. BIRCH. That is British Columbia coal from the Naniamo and the Western Fuel Company. We have got coal right alongside of us, but they will not let us use it in the operation of our steam shovels. We should be able to get that coal for less than \$5 a ton. At \$5 it would have saved us alone in that period \$111,638. Just like the United States Navy; if they had that coal, they could save something like between half a million and six hundred thousand dollars a year on the coal they are burning on the Pacific Ocean.

The CHAIRMAN. Does the navy get any coal down there at Naniamo?

Mr. BIRCH. I do not know whether they get any coal from there or not, but the average cost of their coal is in the neighborhood of \$7 or more. The army and the navy use in the neighborhood of 300,000 tons.

The CHAIRMAN. Do you know of any coal mines being opened in Alaska anywheres?

Mr. BIRCH. No, sir; there are no coal mines that are operating and opened up.

The CHAIRMAN. So whatever is used for railroad building or operating mines, or anything else, has to be imported?

Mr. BIRCH. Yes, sir.

Mr. McCALL. Do you know what the price paid for coal by the ordinary consumer is in Alaska; how much per ton?

Mr. BIRCH. From twelve to fourteen dollars, and even higher, according to locality.

The CHAIRMAN. That is for bituminous coal?

Mr. BIRCH. Yes, sir; blacksmith coal is only used in small quantities, and that is even higher.

The CHAIRMAN. They use a good deal of coal up there in steaming out holes in placer mining.

Mr. BIRCH. They would like to, but it is so expensive.

The CHAIRMAN. But they use it for that purpose in placer mining?

Mr. BIRCH. Very little, Senator; it costs too much. They use more wood as fuel. They can not afford coal; but if they did have the coal they could do it very much cheaper.

Mr. OLNSTED. What do you mean when you say you have the coal right there but they won't allow you to use it. Who won't allow you to use it?

Mr. BIRCH. The United States Government.

Mr. BRANDEIS. Do you know of any prohibition by the United States Government against the use of that coal?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. What is it?

Mr. BIRCH. They stopped Mr. McDonald from taking the coal and selling it to us there.

Mr. BRANDEIS. Where is that, what mine is that?

Mr. BIRCH. That is on this lake, near the Bering Lake.

Mr. BRANDEIS. What do you know about it?

Mr. BIRCH. I know this: That we would be very glad to get that coal to use in the construction of the railroad and we told Mr. McDonald if he would furnish us the coal we would buy it; in fact, we were willing to pay as much to him as we did for the coal below in order to encourage its development.

Mr. BRANDEIS. What else do you know about it?

Mr. BIRCH. He told us he could not; he only stated he was stopped.

Mr. BRANDEIS. But you don't know anything about it?

Mr. BIRCH. Only what I am told.

Mr. BRANDEIS. Did he tell you he was stopped, or he couldn't get his patent?

Mr. BIRCH. I was informed by Mr. Hawkins, the chief engineer of the railroad, that Mr. McDonald came to him and told him that he could not mine that coal; that he was stopped from mining it.

Mr. BRANDEIS. Did he tell you why, or what stopped him?

Mr. BIRCH. Because he didn't have the patents or any title to it.

Mr. BRANDEIS. Yes; he didn't have any patents.

Now, Mr. Chairman, if you will permit me, I would like to ask a few questions of this witness relative to this record.

Mr. Birch, this contract with the Cunninghams gave you a right to that coal at \$1.75 per ton, did it not?

Mr. BIRCH. It gave a right to the railroad for that price.

Mr. BRANDEIS. Yes, for that price; and gave a right to anybody that wanted it at \$2.25?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. On pages 130 and 131 of your testimony before the Committee on Territories, is the following:

Senator FRAZIER. You were to get it for \$1.75 for use on your road, were you not?

Mr. BIRCH. That was only for operating the road.

Senator FRAZIER. Only for operating the road; and of course being interested in the coal properties was sufficient inducement for you to build the road up there?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. So that you were really getting what you estimate as property valued at \$25,000,000 for \$250,000?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Then you were very greatly interested, of course, in having these patents of the Cunninghams perfected—or having these entries, rather, perfected into patents?

Mr. BIRCH. Why, naturally we wanted to see them patented. We wanted to see everybody up there get their patents.

Senator FRAZIER. And yet you have not taken any interest or any steps at all to assist Cunningham in getting them?

Mr. BIRCH. We have had interest, but we have never taken any steps to get patents.

Now, is it a fact that you have never done anything whatsoever in regard to getting patents?

Mr. BIRCH. Except to tell Cunningham that we would like to see him get them, and to hurry up.

Mr. BRANDEIS. When was it that you told Cunningham that you wanted to see him get them and for him to hurry up?

Mr. BIRCH. Whenever I saw him.

Mr. BRANDEIS. Well, now, I also call your attention, Mr. Birch—

Mr. OLMSTED. Let me ask a question right there, will you, Mr. Brandeis?

Mr. BRANDEIS. Certainly.

Mr. OLMSTED. You seem to have stated on page 131, or at least Senator Frazier said, that "you were really getting what you estimate as property valued at \$25,000,000 for \$250,000," and your answer as reported was "Yes, sir."

What property is that you estimated was worth \$25,000,000?

Mr. BIRCH. Well, I hardly think I understood that question in that way. It might eventually be worth \$25,000,000; eventually they might get that out of it, but for the time being it is not fair to put that valuation on that property.

Mr. DENBY. Suppose patents were granted on the property and title passed, and full opportunity was given to work it, what would you pay for it if you were going into it as an investment?

Mr. BIRCH. To buy it outright?

Mr. DENBY. Yes; assuming the conditions to be what they are now.

Mr. BIRCH. I am not prepared to say what we would pay for that.

Mr. MADISON. Now, the \$25,000,000—your estimate was that that was the gross value?

Mr. BIRCH. No; that was assumed in case you could mine it for \$1.75 and sell it to Dan Guggenheim for \$2.25 there would be 50 cents

in there of a profit. Assuming that was all—just assuming that that could be done.

Mr. MADISON. That would be, assuming your premises to be correct, that would be your net value, that would be the net profit?

Mr. BIRCH. Yes, sir.

Mr. MADISON. Assuming your premises to be correct?

Mr. BIRCH. That you might get out of it in two hundred years.

Mr. BRANDEIS. When you talk about "might get out of it," what are you assuming the consumption of that to be? Did you not in your question assume the consumption to be what it is to-day?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Now, were you assuming that the consumption for the next two hundred years in Alaska and on the Pacific coast was going to be what it is to-day?

Mr. BIRCH. You can not tell anything about it.

Mr. BRANDEIS. Would you, as a business man, come here before this committee, as a business man, and want to make any such suggestion that that is the future we have to look forward to, that the consumption in Alaska and on the Pacific coast is going to be hereafter what it is to-day?

Mr. BIRCH. I do not want to impress the committee with any assumption at all.

Mr. Mc'ALL. Mr. Birch, on this question of interest, of course, if you get \$100,000 out of this coal, say, within three or four years, that would draw interest and create a sinking fund, which at the end of two hundred years would wipe out—

Mr. BIRCH. I understand that. My reason for giving you these figures was to show that there is just as much reasoning in them as in the figures which are before the committee.

Mr. BRANDEIS. Mr. Birch—

Mr. BIRCH. Excuse me. Let me get through talking. Now, for quite a while there is going to be absolutely no profit at all on that coal. You understand that there is a limited market at the present time for the coal, and it has got to come in competition with the local coals in the States and with these foreign coals. That competition has got to be met, and the only market to which we would expect at first to get is in Alaska, where the coal is high, and possibly do some business with the navy, and for the operation of our railroad. Our keen desire at this time is to get the coal to use in the running and operating of our railroad. We want to open up the country.

Mr. MADISON. What about your smelters and refiners for your copper mines?

Mr. BIRCH. It is essential to the operation of any reduction work up there; it is essential to the whole country.

Mr. JAMES. What was it you said coal was selling for up there now?

Mr. BIRCH. Twelve or fourteen dollars a ton. It costs us \$11.88 by buying it by the shipload.

Mr. JAMES. You are speculating, then, on the proposition as to whether you would be able to sell this coal then for \$2.25?

Mr. BIRCH. There wouldn't be much speculation on the limited supply. Even for our own use we would save money by buying it for \$2.25.

Senator FLETCHER. How much would you save a year if you got your coal at \$2.25 instead of \$11.88 a ton?

Mr. BIRCH. We would have saved \$111,000 while we were constructing this railroad.

Mr. JAMES. You figured it up for us—\$50,000 for two hundred years. Did you ever figure up what the amount of interest on the sum expended by Guggenheim in trying to make that harbor at Kattalla would have been at the end of two hundred years?

Mr. BIRCH. That would go into too big figures.

Mr. JAMES. That would go to more than your \$800,000,000, would it not?

Mr. BIRCH. I presume it would. But it was necessary for us to do that before the Government would have received that money.

Mr. JAMES. But he preferred, rather than putting that money out at 5 per cent and waiting two hundred years, to expend that money in the hope of getting to these coal fields?

Mr. BIRCH. Not only to the coal fields, but to get up into the interior.

Mr. BRANDEIS. Now, Mr. Birch, is not your proposition about your two hundred years and your \$50,000 just about as unreasonable as the suggestion that the demand and consumption of coal on the Pacific coast and in Alaska are going to be what they are to-day?

Mr. BIRCH. No more than the assumption that it is worth \$200,000,000 or \$25,000,000.

Mr. BRANDEIS. That was the assumption that was based upon your unsworn testimony?

Mr. BIRCH. That is assuming that it could be mined for \$1.75 which is questionable.

Mr. BRANDEIS. I would like to call your attention to another part of your testimony, and that has to do with this option. I want to see whether you want to change that in any way. On page 125 appears the following [reading]:

The CHAIRMAN. Under your option, of course, you had certain rights. I am merely assuming for the purpose of the question that since the coal was absolutely necessary to both your copper mining and the operation of your railroad, you would necessarily do such things as might be necessary to get your coal properties developed.

Mr. BIRCH. The property was not delivered to us. We merely had an option agreement, and, while we accepted it, the property was never delivered to us, nor have we ever paid over any money. We were perfectly willing to do it, provided these people could make good and deliver their patents, which they never did; and they are now held up.

The CHAIRMAN. Right at that point, to make it clear as we go along: If they were to perfect their patents to-morrow, then your rights under your option which was accepted on December 7 would still be operative?

Mr. BIRCH. I am not prepared to say as to that. That is the question.

The CHAIRMAN. That is the case, is it not, Mr. Steele?

Mr. STEELE. That is what we think and hope. Of course, the agreement must speak for itself as to whether it could be enforced against those gentlemen who did not sign it and who were not made parties to it. But so far as we are concerned, we are prepared to live up to it.

Senator FRAZIER. The option is still in existence and still in force so far as you are concerned?

Mr. STEELE. So far as we are concerned; yes, sir.

Now, I ask you, Mr. Birch, whether that is testimony you want to change also?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. That you want to stand by?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. I understood that to be Mr. Steele's testimony.

Mr. BRANDEIS. Well, it is partly his. He referred to Mr. Steele in part of it.

Mr. BIRCH. I have said it was a question. A question of legality.

Mr. VERTREES. Why did you refer it to Mr. Steele?

Mr. BRANDEIS. Is there anything about a legal question in there?

Mr. OLMSTED. It is a question of contract.

Mr. BIRCH. Yes; it is a question of contract, and I referred you to Mr. Steele. I said it is a question, and then you took it up with Mr. Steele. I do not care to change it at all.

Mr. BRANDEIS. I only want to know if you do.

Now, I refer you, Mr. Birch, to a passage in the affidavit of Clarence Cunningham of March 6, 1908, which appears on page 88 of the chronological list, in which he says [reading]:

The Guggenheim syndicate which has been contemplating building a railroad to our coal fields is not directly or indirectly interested in the said coal lands, and they have never been interested; nor have they contributed any money toward the development or purchase of said coal lands.

Then on the top of page 89 this occurs [reading]:

Not only have the Guggenheim interests had nothing to say regarding our coal lands, but no other corporation has had anything to do with it. We have had no written agreement whatever with any corporation, and the only understanding which we have had is that among ourselves.

Did Mr. Cunningham confer with you before making that affidavit?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. When did you first learn that that affidavit was made?

Mr. BIRCH. Just now.

Mr. BRANDEIS. Now, I refer you to another affidavit of Mr. Clarence Cunningham, dated September 4, 1908, which appears in the chronological list at the top of page 131, and I am quoting from a passage on page 135:

In addition to the statements set forth in that certain affidavit made by affiant, dated the 6th day of March, 1903, before L. R. Glavis, chief field division, G. L. O., affiant further states he knows of no individual entryman in said group of entries that has any contractual obligation of any nature whatsoever with the Guggenheim syndicate, or any other syndicate or corporation whatsoever, or any of their agents, whereby his claim or entry or any part thereof is disposed of or to be disposed of, incumbered, or otherwise pledged in any sense whatsoever.

I will ask you whether Clarence Cunningham conferred with you before making that affidavit?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. Did he tell you that Mr. Ballinger, acting as his counsel, had advised him in the making of that affidavit?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. When did you first learn of that affidavit?

Mr. BIRCH. Just now.

Mr. BRANDEIS. Did you know that that affidavit had been presented by Mr. Ballinger to Secretary Garfield in an effort to secure patent on these Cunningham claims?

Mr. BIRCH. No, sir; I didn't know anything about it.

Mr. BRANDEIS. When did you first hear of that?

Mr. BIRCH. Just now.

Mr. BRANDEIS. What other coal claims in Alaska, Mr. Birch, has the Alaska syndicate or any of its officers an interest in?

Mr. BIRCH. They haven't any interest in any coal lands in Alaska.

Mr. BRANDEIS. What do you mean by that? You mean that they haven't any patents for coal lands, or that they are not interested in any claims?

Mr. BIRCH. I mean by that that they haven't any interest in any coal lands in Alaska.

Mr. BRANDEIS. Well, now, are you construing the words "Alaska syndicate" and its officers and agents, and particularly the officers and agents of the syndicate, or are you meaning to include in that persons who are interested in the various corporations which that syndicate controls or owns?

Mr. STEELE. Wait a minute, if you please. I do not think that that is a fair question. It is perfectly fair to ask Mr. Birch the question about the Alaska syndicate, but Mr. Birch can not know about any of the people who may be officials of the various companies in which the Alaska syndicate may be interested, whether they have any interest in any coal claims or not.

Mr. BRANDEIS. He may know. He has testified to quite a number of things that he has learned from others, and I would like to have him testify as far as he knows in answer to this question. Perhaps you can give us more information later.

Mr. STEELE. I can not.

Mr. BRANDEIS. I would like to have the witness answer that question to the best of his ability.

Mr. STEELE. I would like to have his attention called to it directly first, whether he knows—

Mr. BRANDEIS. Is the Alaska syndicate, as such, interested in any other coal claims than the Cunningham group?

Mr. BIRCH. The Alaska syndicate has no interest in any coal lands in Alaska other than that it may have under this Cunningham agreement.

Mr. BRANDEIS. Has it not attempted to become interested in some others?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. Has it not considered becoming interested in others?

Mr. BIRCH. No, sir.

Mr. GRAHAM. Have any of the subsidiary companies of which it is composed any interest or prospective interest?

Mr. BIRCH. None that I know of.

Mr. BRANDEIS. Did they ever consider negotiating or making offers for any coal lands or interests in coal lands in Alaska?

Mr. BIRCH. The only thing that I know of was a Mr. John Rogers personally had some negotiations with a man by the name of Christopher; that is the only thing; and he had nothing to do with the Alaska syndicate.

Mr. BRANDEIS. Do you not remember any connection of anybody of this syndicate with the Hartline group of claims?

Mr. BIRCH. Not a member of the syndicate. I myself had something to do with John Hartline.

Mr. BRANDEIS. That was you individually? Let us know what you individually had to do with those claims.

Mr. BIRCH. In 1906, when I was up in the field, John Hartline came to me with his proposition regarding the coal field, or coal

claims, and at that time I told Rocene that if he could deliver patents and deliver the coal I would like to get hold of the property.

Mr. BRANDEIS. Were you talking on your own behalf then as a capitalist or as an agent of some other person?

Mr. BIRCH. Well, I was interested in it myself, but not for the Alaska syndicate.

Mr. BRANDEIS. Who were you interested in it for?

Mr. BIRCH. Myself and Mr. Rust were talking about it at that time.

Mr. BRANDEIS. Mr. Rust is one of the officers of the Guggenheim concerns, is he not?

Mr. BIRCH. So am I.

Mr. BRANDEIS. Yes. Well, was it for you and Mr. Rust individually that you were going into this enterprise of the Hartline group if patents were issued?

Mr. BIRCH. Possibly.

Mr. BRANDEIS. Well, actually was it?

Mr. BIRCH. Well, I have money enough to do it, and so has Mr. Rust.

Mr. BRANDEIS. What was the amount of money that was contemplated at that time?

Mr. BIRCH. I have forgotten now.

Mr. BRANDEIS. Was it not \$250,000?

Mr. BIRCH. No, sir; it was no such amount.

Mr. BRANDEIS. Did you not state to Andrew Kennedy that you would give \$250,000 for the Hartline claims.

Mr. BIRCH. No, sir; never in my life.

Mr. BRANDEIS. Well; then, this inquiry that you made was not on behalf of the Guggenheims or of the Morgans in any way?

Mr. BIRCH. No; I can not say that it was.

Mr. BRANDEIS. Well, you did not contemplate their taking hold of this proposition, but you were considering it on your own account absolutely, were you?

Mr. BIRCH. Possibly, yes.

Mr. BRANDEIS. Not possibly, but actually. You know what you were considering.

Mr. BIRCH. I considered I was going in if I could get an interest in that property. If he was in position to do business, we could take it up with the people we desired to afterwards.

Mr. BRANDEIS. That is, you would take it primarily with him, and then you would take it up with your people afterwards.

Mr. BIRCH. There was no understanding with him or with the other people.

Mr. BRANDEIS. Who were the people?

Mr. BIRCH. I considered I was able, financially, and otherwise responsible enough, to take up that land, and so was Mr. Rust. Now as to the disposition of that property afterwards, I could have dealt with anybody I liked.

Mr. BRANDEIS. I am not asking you what you could have done. I am asking you what you intended to do, what you know you intended to do.

Mr. BIRCH. I did not know anything about it.

Mr. BRANDEIS. Have you forgotten it?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. You must know.

Mr. BIRCH. I had to have the property first; I did not have it.

Mr. BRANDEIS. When you were negotiating for it you must have had some intent of what you were going to do with it afterwards. What was your intent?

Mr. BIRCH. The intent to get it.

Mr. BRANDEIS. What else did you intend to do?

Mr. BIRCH. I did not know. After I got it was time enough.

Mr. BRANDEIS. Who were the people you intended to take it up with?

Mr. BIRCH. I do not know.

Mr. BRANDEIS. You have no idea?

Mr. BIRCH. No.

Mr. BRANDEIS. Who were the people you were associated with?

Mr. BIRCH. Why, at that time the Alaska syndicate.

Mr. BRANDEIS. The Morgans and the Guggenheims?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. And they wanted coal, did they not?

Mr. BIRCH. They were not particularly anxious to have the ownership in any coal lands.

Mr. BRANDEIS. Well now, whether they were particularly anxious or not, I ask you whether they did not want the coal?

Mr. BIRCH. Not at that time; that was in 1906.

Mr. BRANDEIS. Were not they considering building a railroad then?

Mr. BIRCH. They were building at Valdez, but that was not anywhere near the coal fields.

Mr. BRANDEIS. They wanted coal for Valdez?

Mr. BIRCH. But they had not at that time contemplated building into the coal fields in 1906.

Mr. BRANDEIS. But they wanted coal, did they not, for their copper-mining property?

Mr. BIRCH. They would eventually; yes, sir.

Mr. BRANDEIS. Do you want this committee to understand that this purchase that you were trying to make at that time was a purchase that you intended to make on your own account, and not a purchase for your superiors?

Mr. BIRCH. I want this distinctly understood, that I went in there in 1906, in that coal field, and the Alaska syndicate or anybody connected with it were not building or contemplating building a railroad in there at that time. I went in there to look over the coal field, and John Hartline came to me, and I was willing to make a speculation with John Hartline on that, provided he could deliver the goods. I was perfectly justified in doing that, and perfectly responsible financially and otherwise. I never discussed it with the Alaska syndicate, nor did I contemplate doing business with the Alaska syndicate, nor the Morgans or Guggenheims or anybody. I have taken flyers lots of times.

Mr. BRANDEIS. You were in the employ at that time of the Alaska syndicate, were you not?

Mr. BIRCH. That does not make any difference.

Mr. BRANDEIS. Was it a part of your personal expenses or the expenses of the Alaska syndicate that this excursion was made in regard to ascertaining about the coal fields?

Mr. BIRCH. Principally I think it was the Alaska syndicate.

Mr. BRANDEIS. Now, are Mr. Rust and you the only gentlemen connected with the syndicate, or its subsidiary corporation, who have been interested in these coal propositions?

Mr. BIRCH. I do not know of anybody. We were not interested.

Mr. STEELE. Well, did you ever become interested in that proposition?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. They did not get the patents?

Mr. BIRCH. They did not even so much as get anything.

Mr. BRANDEIS. Did you not mention Mr. M. J. Heney as one of the stockholders of the commercial company?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. He is connected with the Alaska syndicate in some form, is he not?

Mr. BIRCH. M. J. Heney is one of the participants in the Alaskan syndicate.

Mr. BRANDEIS. He is connected with the Guggenheims in other capacities, is he not?

Mr. BIRCH. He is contracting for the building of the road.

Mr. BRANDEIS. He is chief engineer, is he not?

Mr. BIRCH. No, sir; he is contractor.

Mr. BRANDEIS. Is that the only connection that he has with the Guggenheims?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. In any of their enterprises?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. You know that he is one of the Alaska coal claimants, do you not?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Now, what other of the gentlemen who are associated with the Alaska syndicate or its various subcompanies are among the Alaska coal claimants?

Mr. BIRCH. Mr. Heney, I understand, is a contractor. He is doing work for the Alaska syndicate.

Mr. BRANDEIS. But he is in very close relations, is he not, with the Alaska syndicate?

Mr. BIRCH. No more than any other employee or contractor.

Mr. GRAHAM. Does he not own any interest in the syndicate property?

Mr. BIRCH. He is one of the participants. Let me explain that to you.

Mr. GRAHAM. Let me see if I understand it. Perhaps I can do it quicker than you can. He and another, Mr. Graves, I think, were the owners, were they not, of the railroad from the Skagway line at one time?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. The syndicate beat them out.

Mr. BIRCH. No; you are wrong there.

Mr. GRAHAM. The syndicate now owns the railroad, do they not? Let me ask you—

Mr. BIRCH. I think I can explain it faster than you.

Mr. GRAHAM. All right, but I do not want it made the subject of an oration.

Mr. BIRCH. M. J. Heney and Graves started the road from Cordova called the Copper River Railroad.

Mr. GRAHAM. I am not speaking of that one, but the one from the White Pass to Skagway.

Mr. BIRCH. He had nothing to do with it.

Mr. GRAHAM. Which one did he own? Answer that question, please.

Mr. BIRCH. I am trying to explain it.

Mr. GRAHAM. All right; go ahead.

Mr. BIRCH. The Copper River Railway.

Mr. GRAHAM. All right; go ahead.

Mr. BRANDEIS. Well—

Mr. GRAHAM. I asked the witness to go ahead.

Mr. BIRCH. M. J. Heney together with Mr. Graves own the Copper River Railroad. We agreed to take over the Copper River Railroad and permit them to participate in the Alaska syndicate up to the amount of \$500,000, which was then about the amount they had expended, and when the books were audited it was found that they had expended about \$540,000. We gave them \$40,000 in cash and the right to participate in the Alaska syndicate up to the sum of \$500,000.

Mr. GRAHAM. What do you mean by the right to participate? Do you mean that stock was issued to them, or what was it?

Mr. BIRCH. For that I will refer you to Mr. Steele. I do not know just what the Alaska syndicate did.

Mr. GRAHAM. What per cent in their property would that be?

Mr. BIRCH. For that I refer you to Mr. Steele.

Mr. GRAHAM. Do they participate in any of the syndicate property except the Copper River Railroad?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. They are partners, so to speak, in the syndicate itself.

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. That includes all the property owned by the syndicate in Alaska?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. Now, P. A. Heney is also named as one of the claimants in the Cunningham group of claims. Who is he?

Mr. BIRCH. This is M. J. Heney. I do not know who he is.

Mr. GRAHAM. You do not know?

Mr. BIRCH. I do not know.

Mr. BRANDEIS. Well, now, Charles Sweeney is connected with the Guggenheim property, is he not?

Mr. BIRCH. Not in the Alaska syndicate.

Mr. BRANDEIS. In which of them is he?

Mr. BIRCH. I really do not know.

Mr. BRANDEIS. You mean to say you have not any information?

Mr. BIRCH. I do not know at this time whether Charles Sweeney is connected with the Federal Lead or not—I can not say.

Mr. BRANDEIS. He was president, was he not, for many years of that company?

Mr. BIRCH. I think he was.

Mr. BRANDEIS. And he is a Cunningham claimant, is he not?

Mr. BIRCH. I think so.

Mr. BRANDEIS. And Mr. Finch is connected also with that Guggenheim property, is he not?

Mr. BIRCH. That is not a Guggenheim property that I know of.

Mr. BRANDEIS. It is not? What was he?

Mr. BIRCH. The ramifications of the American Smelters and Refining Company I can not tell anything about.

Mr. BIRCH. If you will confine yourself to the Alaska syndicate I can tell you all about it.

Mr. BRANDEIS. What do you know about the other Guggenheim properties besides the Alaska syndicate? You can not tell about the American Smelter and Refining Company. Which other of the so-called Guggenheim properties can you tell about?

Mr. STEELE. Let me ask a question. Are you connected with any Guggenheim properties except the Alaska syndicate, and have you anything to do with them?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. That may be true, and he may know about them nevertheless.

The CHAIRMAN. Ask him if he knows.

Mr. BRANDEIS. What other Guggenheim properties do you know anything about?

Mr. BIRCH. Do you mean that the Guggenheims are interested in?

Mr. BRANDEIS. Yes.

Mr. BIRCH. Well, they are interested in the Nevada Northern Railway, the Nevada Consolidated Copper Company, the Utah Copper Company, the Guggenheim Exploration Company, the American Smelter and Refining Company, the American Smelter Securities Company.

Mr. BRANDEIS. Go right on.

Mr. BIRCH. They are interested in Mexico.

Mr. BRANDEIS. What companies?

Mr. BIRCH. Through the Exploration Company.

Mr. BRANDEIS. What are the companies?

Mr. BIRCH. The Esperanza Mining Company.

Mr. BRANDEIS. What else; go right on.

Mr. BIRCH. In the Yukon Gold in the Yukon territory.

Mr. BRANDEIS. What else?

Mr. GRAHAM. That is in Canada, Mr. Birch.

Mr. BIRCH. Yukon territory.

Mr. GRAHAM. That is British America.

Mr. BIRCH. Yes, sir. It is Yukon territory.

The CHAIRMAN. Yes, that is in Canada. That is up in the Klondike.

Mr. BIRCH. Possibly Mr. Steele can give you more than I can give you about that.

Mr. BRANDEIS. Very well. Which of these groups of coal claims is Heney connected with?

Mr. BIRCH. That is with what is commonly known as the English company.

Mr. BRANDEIS. The Stracey group, is it not?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. That is one of the groups which is immediately adjoining the Cunningham group, is it not?

Mr. BIRCH. Just across the Kushtaka Lake.

Mr. BRANDEIS. Yes; right on the lake and it is one of the properties which Mr. Star recommended that you should consider, your com-

pany should consider purchasing or acquiring an interest in, is it not?

Mr. BIRCH. Yes, sir; some time it would be a good idea to do it.

Mr. BRANDEIS. And the Hartline is another one of them, is it not?

Mr. BIRCH. I forget whether he said it or not.

Mr. BRANDEIS. And which others are there around there?

Mr. BIRCH. I do not know.

Mr. BRANDEIS. You do not remember?

Mr. BIRCH. I do not remember.

Mr. GRAHAM. Mr. Birch, is there a Mr. Labaree connected with any of the subsidiary companies of the syndicate as an officer?

Mr. BIRCH. Not of the Alaska syndicate holdings. There is no Mr. Labaree.

Mr. MADISON. He is in the Alaska Central, is he not?

Mr. GRAHAM. Is he connected with the road which starts out from Seward?

Mr. BIRCH. I think he is receiver for the Alaska Central Railway.

Mr. GRAHAM. Has that not been sold at receiver's sale?

Mr. BIRCH. I do not know anything about that.

Mr. GRAHAM. Is not the syndicate, or some person connected with it, interested in that road, too?

Mr. BIRCH. Not that I know of.

Mr. GRAHAM. Have not the Morgan interests a mortgage? Do they not hold bonds to the extent of one and three-fourths millions in that road?

Mr. BIRCH. I do not know what the Morgan interests hold.

Mr. GRAHAM. The Morgans are connected with the syndicate, are they not?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. Is it syndicate business, so far as you know, if there is such a loan?

Mr. BIRCH. The Alaska syndicate has no interest whatever in the Alaska Central Railway.

Mr. GRAHAM. Is there not a Montreal bank which holds some \$4,000,000 indebtedness against that railroad?

Mr. BIRCH. I do not know about that.

Mr. GRAHAM. And do you know whether that bank is controlled by the Morgan interests?

Mr. BIRCH. No, sir; I do not know that.

Mr. GRAHAM. You have no information on that point?

Mr. BIRCH. No, sir.

Mr. MADISON. Do you think Mr. Steele knows about that?

Mr. GRAHAM. I prefer to wait until Mr. Steele is on the stand himself. I do not like the idea of switching from you to Mr. Steele very much. I think it is very irregular and not satisfactory. I want to get at your knowledge. Let me restate it. Do you know the bank I refer to—the Montreal bank in which the Morgan interests are concerned?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. Is it not the Sovereign Bank?

Mr. GRAHAM. The Sovereign Bank—do you know of it?

Mr. BIRCH. I have heard of such a bank.

Mr. GRAHAM. Do you know it holds some four millions of indebtedness against this railroad running from Seward out?

Mr. BIRCH. I do not know whether they do or not.

Mr. GRAHAM. You do not know whether it is connected with the Morgan interests or not?

Mr. BIRCH. No, sir.

Mr. GRAHAM. If that were so, the syndicate, or some controlling interest in it, would be indirectly interested in the railroad, too?

Mr. BIRCH. Not necessarily—the syndicate.

Mr. GRAHAM. Not as a syndicate—that might be so. That is all.

Mr. BRANDEIS. Now, Mr. Birch, do you not recall that your syndicate was also considering or was advised to extend its interests into the Chezum group of claims?

Mr. BIRCH. I do not know that they were.

Mr. BRANDEIS. You do not remember that. Now, the question was considered by you, was it not, whether the legislation providing for the leasing of coal lands, rather than the sale of coal lands, would be in the interests of the Alaska syndicate?

Mr. BIRCH. No; I had not considered it.

Mr. BRANDEIS. Never considered it?

Mr. BIRCH. I never considered it.

Mr. BRANDEIS. Let me see if I can not refresh your recollection, Mr. Birch. Did you not state that your syndicate or company—whichever it was—would oppose legislation by Congress looking to the leasing of coal lands as distinguished from their sale?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. Are you sure of that?

Mr. BIRCH. Positive.

Mr. BRANDEIS. What arrangement, if any, or negotiation, if any, did you have with the Clark Davis and other groups in relation to Katalla lands?

Mr. BIRCH. I am not very clear on that. I think that we had some negotiations with them in regard to terminal lands at Katalla for the railroad.

The CHAIRMAN. What kind of lands did you say?

Mr. BIRCH. Terminal lands for the railroad at Katalla.

Mr. BRANDEIS. What were they?

Mr. BIRCH. I am not clear about that.

Mr. BRANDEIS. Were those negotiations conducted by you or Mr. Eccles, or some other persons connected with the syndicate?

Mr. BIRCH. I think that possibly Mr. Hawkins and at that time Mr. Rogers were connected with the company.

Mr. BRANDEIS. That is M. K. Rogers, the engineer, and E. P. Hawkins, also an engineer.

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. You think that they acted?

Mr. BIRCH. I think if anyone acted it was they who acted.

Mr. BRANDEIS. And when were those negotiations being conducted?

Mr. BIRCH. Well, that would be 1906.

Mr. BRANDEIS. 1907, was it not?

Mr. BIRCH. No—it may be possible that they continued into 1907.

Mr. BRANDEIS. Do you not recall that the question came up in regard to obtaining patents for those lands in the summer and fall of 1907 and the matter was brought up with Commissioner Ballinger?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. You do not remember?

Mr. BIRCH. No; I do not recall that.

Mr. GRAHAM. Might I ask a few questions at that point? Mr. Birch, I am quite a bit at sea with reference to your Alaska matters, and I would like you to straighten me out if you can, if you please. Does the Yukon River or any of its navigable tributaries reach the copper region where your Bonanza mines are?

Mr. BIRCH. No, sir.

Mr. GRAHAM. Is there any navigable water to that place?

Mr. BIRCH. There is a portion of the Copper River and the Chitina that is navigable at certain periods of the year.

Mr. GRAHAM. Is the Yukon of any service in a navigable way so far as the interior is concerned where the copper country is?

Mr. BIRCH. No, sir.

Mr. GRAHAM. As I understand it, then, there are about three ways that are practicable for getting to the interior there through the mountain range which in a general way parallels the coast, one by way of Skagway and the White Pass, the Upper Yukon, another by way of the Copper River, and the third by way of Seward and the Alaska Central. Is that about right?

Mr. BIRCH. And the mouth of the Yukon.

Mr. GRAHAM. Well, that does not reach the interior quite, does it?

Mr. BIRCH. Well, you go up the Tanana that way.

Mr. GRAHAM. Is it navigable?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. I thought there were rapids there that interfered with navigation?

Mr. BIRCH. Not on the Yukon.

The CHAIRMAN. The Tanana is navigable up to Fairbanks?

Mr. BIRCH. Yes; and above that, too, Senator.

Mr. GRAHAM. That does not reach the copper country?

Mr. BIRCH. No, sir.

Mr. GRAHAM. Nor the coal country?

Mr. BIRCH. No, sir.

Mr. GRAHAM. How many vessels did you say you had plying between the States and Alaska?

Mr. BIRCH. Twelve.

Mr. GRAHAM. Does that include some recently added—I believe you lost two?

Mr. BIRCH. That includes the new ones just purchased.

Mr. GRAHAM. You lost two and added one or two new ones making, you say, twelve altogether?

Mr. BIRCH. Yes.

Mr. GRAHAM. What is the total tonnage of those twelve?

Mr. BIRCH. I could not say, offhand.

Mr. GRAHAM. Would 28,000 tons be all right?

Mr. BIRCH. I do not think it would amount to as much as that.

Mr. GRAHAM. What other means of transportation are there from the States to Alaska besides yours; what I want to get at is, about what per cent of the carrying power does the syndicate own and control.

Mr. BIRCH. There is the Canadian Pacific Steamship Company.

Mr. GRAHAM. What have they?

Mr. BIRCH. They have about 28 vessels.

Mr. GRAHAM. But they ply from Vancouver only.

Mr. BIRCH. No—I beg your pardon—when I said '28 for the Canadian Pacific I meant that the lines other than ours, altogether, have about 28 vessels.

Mr. GRAHAM. One is the Humboldt Steamship Company?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. It has just one?

Mr. BIRCH. Yes; they have one, I think, one.

Mr. GRAHAM. Only one. And another is the Alaska Coast Steamship Company?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. They have two rather antiquated boats, have they not?

Mr. BIRCH. It has more than two—it has the *Portland* and the *Bertha* and the *Genee*—and there is another—I think it has four.

Mr. GRAHAM. The Pacific Coast Company has one boat?

Mr. BIRCH. No, they have at least six; I think they have eight boats.

Mr. GRAHAM. And another is the Northern Steamship Company. What has it?

Mr. BIRCH. I am not familiar with that line.

Mr. GRAHAM. Now, have any of those lines, except yours, or those controlled by you, any docks or wharves at the Alaska end?

Mr. BIRCH. We have a wharf at Ketchikan.

Mr. GRAHAM. That is not my question. Perhaps you had better hear it again, and then you may be able to answer it.

(The question was read by the reporter, as follows:)

Now, have any of those lines except yours, or those controlled by you, any docks or wharves at the Alaska end?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. Where?

Mr. BIRCH. The Pacific coast.

Mr. GRAHAM. Where are their wharves?

Mr. BIRCH. In Ketchikan and Juneau.

Mr. GRAHAM. Skagway is a port, is it?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. They have none there?

Mr. BIRCH. No, sir; neither have we.

Mr. GRAHAM. None at Cordova or Valdez, have they?

Mr. BIRCH. Not the Pacific coast; no, sir.

Mr. GRAHAM. Is there not a line of steamers that runs from Seattle and from the States to Skagway and connect by way of railroads and the White Pass with the upper Yukon?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. You absolutely control that line, do you not?

Mr. BIRCH. No, sir.

Mr. GRAHAM. Who joins with you in that regard?

Mr. BIRCH. You are speaking now of the steamship line or the wharf or the railroad?

Mr. GRAHAM. Well, I am speaking more particularly, for instance, of freight consigned from Seattle to some point beyond the White Pass. That is the only company that could, without changing the company, carry that freight, is it not?

Mr. BIRCH. No, sir; they all carry it.

Mr. GRAHAM. They all carry it? How about the rate from Skagway to the interior? Your company controls those, does it not?

Mr. BIRCH. No, sir.

Mr. GRAHAM. How is it controlled?

Mr. BIRCH. We only ply between Seattle and Skagway.

Mr. GRAHAM. That is, by water?

Mr. BIRCH. By water.

Mr. GRAHAM. But who controls the line from there on?

Mr. BIRCH. The White Pass and Yukon Railway Company.

Mr. GRAHAM. To what extent is your syndicate or any of the members of the syndicate interested in that road?

Mr. BIRCH. They have no interest whatever.

Mr. GRAHAM. Who controls it?

Mr. BIRCH. I understand Close Brothers, of London.

Mr. GRAHAM. Are not the Close Brothers connected with your company?

Mr. BIRCH. No, sir.

Mr. GRAHAM. Is not Mr. Graves their representative, locally, in Alaska?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. Is he not also concerned in your syndicate?

Mr. BIRCH. He is one of the participants in the syndicate.

Mr. GRAHAM. He is a participant in the syndicate, and a member of the firm of Close Brothers & Co., London, bankers, who control this line, you say?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. So there is at least an indirect connection there between your syndicate and that railroad.

Mr. BIRCH. Just the same as there would be with any stockholder who might happen to be interested in outside properties having an interest in that.

Mr. GRAHAM. But there is the connection that you and I have just recited?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. Now, the Copper River Railroad and the Copper River is the other gateway to the interior, is it?

Mr. BIRCH. That is one of them.

Mr. GRAHAM. That you control entirely—the syndicate?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. The road from Seward that, I think, might be described as the Matanuska line, which reaches the Matanuska coal fields, does it not; or, at least, in that direction?

Mr. BIRCH. It is projected in that direction.

Mr. GRAHAM. And there is a stream from the Matanuska River?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. Does that penetrate the mountain range and make a pass through to the interior?

Mr. BIRCH. It is possible to get up there in that way into the Copper River country.

Mr. GRAHAM. You have stated already, I believe, that the syndicate has no control, directly or indirectly, over the line from Seward by way of Matanuska.

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. That is correct, is it?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. If you control—and when I say you, I mean the syndicate—if you control the Copper River line and the Skagway and White Pass line and the Seward and Matanuska line, you would practically control every really working road from the coast to the interior.

Mr. BIRCH. If we did, but we do not.

Mr. GRAHAM. I say if you did.

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. Now, which of those lines reaches the Copper country?

Mr. BIRCH. None of them at the present time.

Mr. GRAHAM. Which one will?

Mr. BIRCH. The Copper River; and the Northwestern Railway is building into the coal fields and copper fields now.

Mr. GRAHAM. Those copper fields or mines of copper or whatever you call them, are located comparatively close together, and yet not exactly together; they are separated, are they, by mountain ridges?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. I notice by the map that streams are represented flowing in parallel directions and near the headwaters of each are represented copper mines. Is that about the way it occurs?

Mr. BIRCH. The copper region is in the Chitina district, and runs about northwest and southeast.

Mr. GRAHAM. How much of this copper country does the syndicate own?

Mr. BIRCH. A very small portion of what is known as the Copper Belt.

Mr. GRAHAM. Is there any single owner aside from the syndicate which owns a considerable amount of it?

Mr. BIRCH. There are several companies that hold more locations than the Alaska syndicate.

Mr. GRAHAM. But it is not true that they are entirely at the mercy of your company for the means of transportation?

Mr. BIRCH. No, sir.

Mr. GRAHAM. How else can they get their ore to a smelter or to any refinery?

Mr. BIRCH. Build another railroad.

Mr. GRAHAM. That is the only way, is it?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. And when you said they were not at your mercy, you meant that they could go to work and do as you did—build another railroad?

Mr. BIRCH. Yes, sir; but it would not be practicable.

Mr. GRAHAM. Where would they put it?

Mr. BIRCH. It is questionable.

Mr. GRAHAM. I say, where would they put it? You have the Copper River line?

Mr. BIRCH. There is room for others there.

Mr. GRAHAM. How wide is the valley through which railroads might be constructed to the Copper River country?

Mr. BIRCH. They could go on the other side of the river—one on the east side and one on the west side.

Mr. GRAHAM. At the narrowest place, how wide is it?

Mr. BIRCH. Up in Woods Canyon it is probably 600 feet wide.

Mr. GRAHAM. And between those glaciers, how wide is it where your road crosses the river from necessity?

Mr. BIRCH. There is a mile difference between the two.

Mr. GRAHAM. So that the only thing between the other copper companies and transportation and means of access to smelters is a railroad?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. They have none; that is, there is no road there but yours?

Mr. BIRCH. No, sir.

Mr. GRAHAM. And until there is, they would be at the mercy of your company for transportation?

Mr. BIRCH. Our road is not completed even now.

Mr. GRAHAM. Assuming, so far as it is completed, it is the only means of transportation from the Copper country out?

Mr. BIRCH. The only practical means of transportation.

Mr. GRAHAM. And by that you mean to say that they could carry it over on mules, or a man could carry some on his back?

Mr. BIRCH. Yes, sir; or by sled.

Mr. GRAHAM. That is what you mean by use of the word "practical?"

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. Now, how many vessels do you use in connection with your fisheries projects?

Mr. BIRCH. I am not very familiar with the detailed working of the fishery business, but the Alaska Steamship Company hauls down considerable of the pack, and they also have the sailing vessels that go up there.

Mr. GRAHAM. You have a fishing fleet?

Mr. BIRCH. Yes, sir; a fishing fleet.

Mr. GRAHAM. But in the busy season you use the regular vessels of the Alaska Steamship Company to supplement the fishing fleet?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. The canneries are all located up there, I suppose?

Mr. BIRCH. In Alaska; yes, sir.

Mr. GRAHAM. And the canning is carried on how long each year?

Mr. BIRCH. I think it begins along the first part of June and extends up to June and July and possibly into August.

Mr. GRAHAM. I notice by the report of the Fish Commissioner that most of that work is done by men imported for the purpose from the United States?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. Taken from wherever they could be found?

Mr. BIRCH. Chinese labor.

Mr. GRAHAM. Most of it is Chinese and other cooly labor?

Mr. BIRCH. Yes, sir; any kind of labor that they can get.

Mr. GRAHAM. I suppose it is safe to assume that it is of no value whatever to Alaska?

The CHAIRMAN. I want to inform the members of the committee that the men who do the canning—that is, put up the fish—are Chinese and Japanese; but the men who catch the fish and bring them in are Norwegians and Swedes.

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. Of course it will be a great deal better done when they do it?

The CHAIRMAN. Yes, sir.

Mr. GRAHAM. The Norwegians and Swedes to whom the chairman refers are not residents of Alaska, are they?

Mr. BIRCH. Some of them are; yes, sir.

Mr. GRAHAM. About what per cent of them would be?

Mr. BIRCH. I do not know.

Senator SUTHERLAND. Mr. Chairman, are we going to investigate the Norwegian situation here?

Mr. GRAHAM. You had better ask the chairman. He is the one who brought up that question.

The CHAIRMAN. I was simply trying to put the gentleman on the right track.

Mr. GRAHAM. Now, Mr. Birch, from what you have stated, as I understand it, if the syndicate had the Alaska coal it would pretty nearly have Alaska, would it not?

Mr. BIRCH. No, sir.

Mr. GRAHAM. What would be left?

Mr. BIRCH. I do not think that is a fair question to ask me.

The CHAIRMAN. Alaska contains 590,000 square miles.

Mr. BIRCH. There would be several thousand left.

Mr. GRAHAM. Most of it seems to be principally around the neighborhood of the Copper River and the Katalla region and that vicinity. There is not any gold to speak of in that part of Alaska, is there?

Mr. BIRCH. There is a little placer mining going on up in the interior.

Mr. GRAHAM. But most of that is across the line in the British possessions, is it not?

Mr. BIRCH. No, sir; up at Nome and in the Seward Peninsula.

Mr. GRAHAM. Has the syndicate any interests there?

Mr. BIRCH. No, sir; not in the mining property.

Mr. GRAHAM. The gold mines or the placer mining in which they are interested is mostly across the line on the British side, is it not?

Mr. BIRCH. The Alaska syndicate has no interests in any gold mines.

Mr. GRAHAM. That is all I care to ask.

Mr. BRANDEIS. Mr. Birch, how much has the Alaska syndicate invested in Alaska other than its railroad projects?

Mr. BIRCH. I could not say offhand what they have invested.

Mr. BRANDEIS. Well, can you state approximately how much is invested in millions of dollars?

Mr. BIRCH. I should say approximately \$15,000,000.

Mr. BRANDEIS. Fifteen millions of dollars exclusive of the railroad?

Mr. BIRCH. Oh, no, sir; that includes that.

Mr. BRANDEIS. Including the railroad?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. How much of that is the railroad?

Mr. BIRCH. About ten at the present time.

Mr. BRANDEIS. Has not the railroad entered into contract which obligated it to expend a considerably larger amount?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. How much additional?

Mr. BIRCH. Well, in the neighborhood of \$5,000,000 more.

Mr. BRANDEIS. In the neighborhood of \$5,000,000 more. Well, that would make twenty millions of dollars of investment by the syndicate?

Mr. BIRCH. Contemplated, and what we have already in there.

Mr. BRANDEIS. Now, is it a fact that all of their investments outside of the railroad represent only five million of dollars?

Mr. BIRCH. I think so.

Mr. BRANDEIS. You think so?

Mr. BIRCH. I think so.

Mr. BRANDEIS. How much has been expended since last April?

Mr. BIRCH. I can not say offhand what has been expended.

Mr. BRANDEIS. Well, already in April, according to a letter of Mr. Eccles, which appears on pages 2099 and 2100 of the record, he states that the investments made and contracted already, or expenditures made and contracted for on the railroad, is within \$16,000,000 at that time.

Mr. BIRCH. Well, he knew what he was talking about.

Mr. BRANDEIS. Do you not want now to raise your estimate as to what the investment is, in view of that statement?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. You think \$4,000,000 represents all that there is in all the other properties?

Mr. BIRCH. I think that would pretty nearly cover it.

Mr. BRANDEIS. What is the investment in the copper mines?

Mr. BIRCH. About—

Mr. STEELE. Mr. Chairman, may I ask a question? I do not want to make any objections, but I understood that this committee was sitting to investigate the Department of the Interior and Bureau of Forestry. Now, I do not understand what pertinence to that inquiry the question of how much money the syndicate has invested in things which do not concern the Government has. He might as well go on and ask each one of us what our income is, how much we spend a year, and any other personal question. I do not know where it is going to end.

Mr. GRAHAM. I raised that question a month ago and they sat down on me so hard that I have not dared to refer to it since.

Mr. BRANDEIS. I think, Mr. Steele, if you had read the report of the committee you would find the expressed statement of the chairman, as representing the committee, that the personal affairs of the individual witnesses, and those whom they represent, are of interest, and may be gone into.

Mr. STEELE. When it does not affect the question now under consideration?

Mr. BRANDEIS. I think that was the rule.

Mr. BIRCH. If it is the desire of the committee—

The CHAIRMAN. The chair made no such ruling as that.

Mr. BRANDEIS. I think it was done in regard to Mr. Barr in a most definite way.

Mr. GRAHAM. Does the chairman desire to see the record?

The CHAIRMAN. I will state to the gentleman that I will look up the record myself.

Mr. BRANDEIS. I can refer you to it, Mr. Chairman. Mr. Birch, have you any additional answer to make?

Mr. BIRCH. If it is the desire of the committee to know about what we have expended up there, I will furnish you that later on, and then you will get it exact. I can not say offhand just what we have expended up there.

Mr. BRANDEIS. It is our desire, Mr. Chairman, that we have an exact statement of the facts.

The CHAIRMAN. About two weeks ago we asked for that contract between Mr. Glavis and the man he was operating with. Have you produced that contract as yet?

Mr. BRANDEIS. I propose to have Mr. Glavis testify to that.

The CHAIRMAN. Have you the contract here?

Mr. BRANDEIS. I have not got it physically in the room, but I have the contract.

Senator FLETCHER. Mr. Birch, is the Yukon Coal Company a Guggenheim company?

Mr. BIRCH. Yes, sir; the Guggenheim Exploration Company.

Senator FLETCHER. Do you know whether they pay a royalty to Canada?

Mr. BIRCH. I think they do.

Senator FLETCHER. Do you know what it amounts to?

Mr. BIRCH. I do not know what it amounts to.

Senator FLETCHER. I have seen it stated that it amounted to 2½ per cent on their gross annual earnings of some twenty millions, I think.

The CHAIRMAN. I think, Senator, under the Canadian law they give first a license, and then they pay a percentage on the output of the mine, not on the stuff.

Senator FLETCHER. Two and one-half per cent of the annual gross output on two millions?

Mr. BIRCH. They pay a royalty on the gold produced.

The CHAIRMAN. Their mining law is entirely different from ours?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. There was one question that I neglected to ask Mr. Birch. I believe we all know the fact, but I think the record ought to affirmatively show it. United States Senator Guggenheim is a member of the firm of Guggenheim Brothers, who are of this syndicate, is he not?

Mr. BIRCH. Mr. Steele could tell you better as to that.

Mr. GRAHAM. Do you not know yourself?

Mr. BIRCH. I do not know whether he is or not. I think he is of Guggenheim & Sons—I think so. Whether he is interested in the Alaska syndicate or not, I really do not know.

Mr. GRAHAM. The other Guggenheims whom you know, and who are interested in it, are his brothers, are they not?

Mr. BIRCH. Yes, sir.

Mr. GRAHAM. I neglected to ask you that question before.

Mr. BRANDEIS. I think, Mr. Chairman, that that is all that I care to ask Mr. Birch. I understand that he is to furnish this additional information.

Mr. OLMSTED. I would like to ask the witness, if he has no objection, to state the dividends that this railroad company pays.

Mr. BIRCH. Nothing; it pays nothing. We are building it now.

Mr. OLMSTED. What dividends does the syndicate pay?

Mr. BIRCH. None. We put up this money and have cleared not a cent out of the country, and still they would put in more money.

Mr. DENBY. Speaking generally, business is not very good in Alaska, is it?

Mr. BIRCH. Well, if the resources of the country are going to be sold up, there will be no people there and no development. There will

be nothing there except icebergs, and those icebergs have about as much value as the coal, because if you get them to the market you can sell the ice.

Senator PURCELL. How many different enterprises have you got there?

Mr. BIRCH. The Alaska syndicate?

Senator PURCELL. In round numbers, I mean.

Mr. BIRCH. I have already stated them.

Senator PURCELL. Can you give us the number?

Mr. BIRCH. There is the Copper River and Northwestern Railway, the Katalla Company, and the Kennicott Mines Company, and its holdings in the Northwestern Commercial Company.

Senator PURCELL. About four?

Mr. BIRCH. And the Northwestern Commercial Company has holdings in two or three subsidiary companies.

Senator PURCELL. Is that the condition of all of them—that none of them pay?

Mr. BIRCH. The Alaska syndicate has never got its dividends out of any of them.

Mr. DENBY. Do you expect to in two or three hundred years?

Mr. BIRCH. We hope so.

Senator PURCELL. Why do you put so much in it if none of them pay?

Mr. BIRCH. We have hopes that some day they will.

Senator PURCELL. You do not mean to say that none of them pay, do you?

Mr. BIRCH. They have not had an opportunity to pay.

Mr. MADISON. What about that fisheries company?

Mr. BIRCH. That pays, and it is put in the commercial company.

Mr. MADISON. But it is a portion of the Alaska syndicate?

Mr. BIRCH. It has not paid any dividends to the Alaska syndicate.

Mr. MADISON. But it is a portion of the Alaska syndicate, and it is a dividend paying or a profit-making concern?

Mr. BIRCH. It is a profit-making concern.

Mr. MADISON. So that is one of the institutions of the Alaska syndicate, and it is a profitable and paying concern?

Mr. BIRCH. Yes, sir; I think the steamship company is a profitable concern.

Mr. MADISON. You stated in your examination before the Senate Committee on Territories that the Alaska Steamship Company only did about 15 or 16 per cent of the business—the carrying business—in Alaska?

Mr. BIRCH. I think that is about all.

Mr. MADISON. Do you want to stand by that now?

Mr. BIRCH. I think that is about right.

Mr. MADISON. As a matter of fact does not the Alaska Steamship Company have a much greater tonnage than all the rest of the companies carrying to Alaska?

Mr. BIRCH. I never understood it so.

Mr. MADISON. Now I do not include the British Columbia Company that carries from Vancouver to Skagway—that carries bonded steamships but excluding that, is it not a fact that the Alaska Steamship Company carries more passengers and more freight than all the rest of the steamship companies combined that go to Alaska proper?

Mr. BIRCH. I think it might at the present time, because we carry up most of the laborers in connection with the construction of the railroad, but they are our own people.

Mr. MADISON. Excluding those—excluding the legitimate passenger business and freight business, is it not a fact that to-day the Alaska Steamship Company is carrying more passengers and more freight, and excluding also that company that carries between Vancouver and Skagway, that carries stuff from the Canadian Pacific—you know what I mean?

Mr. BIRCH. I understand what you mean.

Mr. MADISON. Excluding that also, because that has no Alaska freight, is it not a fact that your Alaska Steamship Company carries more than all the rest combined?

Mr. BIRCH. I would not want to say that offhand they did.

Mr. MADISON. I want to ask you now if you want to say before this committee that it is not the fact?

Mr. BIRCH. No, sir; I do not want to say that.

Mr. MADISON. As a matter of fact, it is your judgment that they carry at least as much as all the rest combined?

Mr. BIRCH. No; it is not my judgment.

Mr. MADISON. It is not?

Mr. BIRCH. No, sir.

Mr. MADISON. Then what per cent of it do they carry? What is your judgment?

Mr. BIRCH. It would only be guessing at it.

Mr. MADISON. Give your best judgment; you are one of the manager of the Alaska Steamship Company, are you not?

Mr. BIRCH. No, sir. I am a director, but not one of the managers.

Mr. MADISON. You testified that you and Mr. Eccles and Mr. Steele are the men who manage for the Guggenheims and the Morgans, the business of the Alaska syndicate?

Mr. BIRCH. Yes, sir.

Mr. MADISON. Now, then, you are one of the general managers of all this business, are you not?

Mr. BIRCH. Yes, sir.

Mr. MADISON. Now, then, that being true, you have watched not alone the carrying of the Alaska Steamship Company and the business that it has done, but also its competitors, have you not?

Mr. BIRCH. I think at times we have; yes, sir.

Mr. MADISON. Now, I want to ask you, from the knowledge that you have, if you do not believe that, excluding that British Columbia company that carries only the stuff that goes into the Yukon country, that your Alaska Steamship Company carries more freight and more passengers than all the rest of those lines that go into Alaska?

Mr. BIRCH. No, sir; I would not state that right now.

Mr. MADISON. Will you not state that, as a matter of fact, they carry as much as all the rest of them?

Mr. BIRCH. No, sir; I would not state that now. If you desire to get this information in detail as to what percentage we do, I can probably furnish it for you.

Mr. MADISON. Will you do that?

Mr. BIRCH. If it is the desire of the committee; yes, sir.

Mr. MADISON. Well, I am a member of the committee and will ask you to do it. I do not think any gentleman on the committee will object.

Mr. BIRCH. Yes, sir.

Mr. MADISON. I want to see whether or not it is correct, and in all fairness to you, too, that your company only carries about 15 or 16 per cent of the business.

Mr. BIRCH. We have nothing to conceal and I will be very glad to give you any information that we can. Because I do not answer you now is because I am not at this time prepared to do it so far as respects figures, but we will be very glad to give you the information you desire.

Mr. MADISON. Now I want to ask you, as a matter of fact, if it is not true that these steamship companies other than your own that operate to Alaska, operate only—that is, each one operates only—a small number of boats, and generally inferior boats, and if, as a matter of fact, they do not constitute any real competition with you in the carrying trade?

Mr. BIRCH. Oh, yes, sir; they do.

Mr. MADISON. Taking it all the year round, is it not a fact that they do not constitute any real competition, and that the Alaska Steamship Company has practically the monopoly of the carrying trade into Alaska?

Mr. BIRCH. If we did not cut any figure I think the rates would be much higher.

Mr. MADISON. In other words you mean to say that you, like most syndicates, would charge the traffic with all that it would bear.

Mr. BIRCH. I think so.

Mr. MADISON. That is all.

Mr. BRANDEIS. You spoke of the Pacific Coast Steamship Company. Are not some of the members of that syndicate interested in the Pacific Coast Steamship Company?

Mr. BIRCH. Not that I know of.

Mr. BRANDEIS. Are not the Morgans interested in that company?

Mr. BIRCH. I do not know whether they are interested in the Pacific Coast Company or not.

Mr. BRANDEIS. Or the Guggenheims?

Mr. BIRCH. Not that I know of.

Mr. MADISON. You were speaking a moment ago about not controlling the carrying trade into Alaska. As far as the railroads are concerned there are but three gateways into Alaska—that is true, is it not—to the interior of Alaska, to the mountains that run along the southern coast and the eastern coast of Alaska?

Mr. BIRCH. Well, exclusive of the mouth of the Yukon, I would say that is correct.

Mr. MADISON. I am speaking of the southern part; you would have to go clear around and get into the mouth of the Yukon. Now there are those three ways. You folks are in the Copper River Valley, are you not?

Mr. BIRCH. Yes, sir.

Mr. MADISON. That is one of them. You are now there and the only railroad there?

Mr. BIRCH. Yes, sir.

Mr. MADISON. The Alaska Central Railroad is a bankrupt concern at the present time, or one that has just emerged from a receivership, is it not?

Mr. BIRCH. I think so.

Mr. MADISON. It was found to be a financial failure, and went into the hands of a receiver and has just emerged, and as a matter of fact was sold at public auction for something like \$600,000. That is true, is it not?

Mr. BIRCH. I do not know.

Mr. MADISON. Now, the only other gateway into Alaska is by means of this Yukon and White Pass Railroad. That is true, is it not?

Mr. BIRCH. You omitted Valdez. You can go in by way of Valdez.

Mr. MADISON. Over the Thompson Pass?

Mr. BIRCH. Yes, sir.

Mr. MADISON. And the Thompson Pass road would present engineering feats that would be pretty difficult; is that true?

Mr. BIRCH. Difficult to operate; yes, sir.

Mr. MADISON. Very difficult on account of the grades. So that the three practical gateways into Alaska are the three which I have named?

Mr. BIRCH. Yes, sir.

Mr. MADISON. Now, then, Mr. Graves is the president of the White Pass and Yukon Railroad, is he not?

Mr. BIRCH. Yes, sir.

Mr. MADISON. And Mr. Graves is a member of the Alaska syndicate, is he not?

Mr. BIRCH. Well, he is a participant, but he does not know anything about the business or the operations of the Alaska syndicate.

Mr. MADISON. All right. Maybe that is all the better. Is it not a fact, too, that the Alaska syndicate—and you testified to this fact—that the Alaska syndicate was nothing more than a combination existing between J. P. Morgan, M. Guggenheim & Sons, and their associates?

Mr. BIRCH. Yes, sir.

Mr. MADISON. It is not a corporation?

Mr. BIRCH. No, sir.

Mr. MADISON. It is not a partnership, strictly speaking; it is not intended to be such. That is true, is it not?

Mr. BIRCH. I would rather Mr. Steele would answer that.

Mr. MADISON. As a matter of fact, it is simply an agreement of all these gentlemen and interests to cooperate together for the purpose of developing certain things in connection with the Territory of Alaska; is that not true?

Mr. BIRCH. Yes, sir; but all the participants in that might not necessarily know about the details of the business.

Mr. MADISON. Certainly, I think that is true, but that is a fact that it is simply an agreement or combination between those gentlemen to all cooperate together for the purpose of developing such business in and about the Territory of Alaska.

Mr. BIRCH. Will you please put that question to Mr. Steele?

Mr. MADISON. You answered it one time, before the Senate Committee on Territories, in the affirmative.

Mr. BIRCH. As far as I know M. Guggenheim & Sons and J. P. Morgan Company formed this syndicate, and it is understood that the different interests which they became interested in are offered to the Alaska syndicate. If the Alaska syndicate does not care for it they do not take it up, and as far as I know at the present time all the holdings of J. P. Morgan and M. Guggenheim & Sons in Alaska are in this Alaska syndicate.

Mr. MADISON. All right, but, as a matter of fact, it is an understanding or agreement between these gentlemen, whether in writing or otherwise, that they will cooperate together for the purpose of developing business and improvements of different kinds in and about the Territory of Alaska.

Mr. BIRCH. Yes, sir; particularly this transportation business.

Mr. MADISON. And one of the parties to that cooperative agreement, and one of the participants in this plan on the part of these capitalists to cooperate together in the development of certain business and certain things in and about the Territory of Alaska, is Mr. Graves, who is the President of the White Pass and Yukon Railroad.

Mr. BIRCH. He has no connection whatever with the developments of the Copper River country.

Mr. MADISON. That is all right, but he is a member of the syndicate. is he not?

Mr. BIRCH. Yes, sir; a participant.

Mr. MADISON. And a participant in it, according to your own language?

Mr. BIRCH. Yes, sir; a participant.

Mr. MADISON. So that the only two railroads that are on their feet and capable of being operated, being operated or in the process of construction for the purpose of operation, are these two railroads which the members of the Alaska syndicate own and operate and control?

Mr. BIRCH. No, sir; you put that question wrongly. The Alaska syndicate does not control a bit of the White Pass and Yukon Railroad.

Mr. MADISON. But the president is a participant in, and a member of, the Alaska syndicate.

Mr. BIRCH. That does not make any difference.

Mr. MADISON. Well, different conclusions might be drawn about that.

Mr. BIRCH. Another thing—

Mr. MADISON. So that they have gone into the coal business up there, and they have gone into the copper business, and they have gone into the fisheries business; they have the biggest steamship line running there; they have control, either directly or indirectly, of the only two railroads that are actually operated or capable of being operated; and the whole business, boiled down, means a great big plan and scheme upon the part of that Alaska syndicate to control and maintain and own a very large portion of Alaska and its interests and industries.

Mr. BIRCH. That is your inference.

Mr. MADISON. But from the evidence, can any intelligent man draw any other conclusion?

Mr. BIRCH. I am not speaking for other people.

Mr. BRANDEIS. Now, let me ask you whether you wish this committee to understand by your statement, that you made some time ago as to the unprofitableness of these ventures, that all the success of the Guggenheim bargain interests in Alaska depended upon the opportunity of getting coal from the coal fields?

Mr. BIRCH. The railroad, and in fact the entire country up there is dependent upon the opening up of these coal fields.

Mr. BRANDEIS. And the key of the whole situation in Alaska is the coal fields, in your opinion, is it not?

Mr. BIRCH. No, sir; not the whole of Alaska.

Mr. BRANDEIS. The whole of the investment which has been made and the attempts at settlement which have gone forward.

Mr. BIRCH. Are you speaking of our attempts?

Mr. BRANDEIS. What you have reference to, that all of Alaska was not worth any more than the glaciers unless one could get at the coal.

Mr. BIRCH. I did not say any such thing.

Mr. BRANDEIS. Perhaps you used the term "icebergs."

Mr. BIRCH. I did; but I did not say you had to get the coal to get it. I put that on a parity. I said that the ice, when you got it into the market would be of value. So it is. It is beautiful ice; no better in the country, and if you had it right here in Washington it would be valuable.

Mr. BRANDEIS. Do you mean this committee to understand that the value and development of that property there depend upon the development of these coal fields?

Mr. BIRCH. It very largely depends. The Copper River and the Northwestern Railway and the whole development of the interior of the country depend a great deal upon the opening of those coal fields.

Mr. BRANDEIS. Then this large investment—your owning the railway, made and contracted to be made—of at least \$16,000,000, aside from the investment in copper mines and the other investments you are in, depends in large measure upon the opening up of this coal field?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Do you wish this committee to understand that, although that is a fact, the Morgans and the Guggenheims have remained for over two years with an opportunity of getting patents, and, with the possibilities there, they have exerted themselves in no respects and in no manner to advance the granting of those patents?

Mr. BIRCH. We never in any way tried to get those patents, except to tell Cunningham to hurry up and get them.

Mr. BRANDEIS. That is the only thing. Do you mean to say, Mr. Birch, that you did not know when ex-Governor Moore came down here immediately after that option was accepted in December, 1907, he urged upon Commissioner Ballinger the granting of those patents?

Mr. BIRCH. I did not know that he was going to urge that, but I know that Governor Moore was here trying to get his patents.

Mr. BRANDEIS. You knew that he was hurrying down here almost immediately after that telegram of the Guggenheims accepting it came?

Mr. BIRCH. I do not know that he was in a hurry particularly about it.

Mr. BRANDEIS. Well, that he took reasonable expedition, or observed it, in coming down here?

Mr. BIRCH. I know that Governor Moore was on here looking after his patents, or trying to find out something about them. That is all that I do know.

Mr. BRANDEIS. You know, do you not, that his visit here followed very quickly after the receipt by Clarence Cunningham of this December 7 patent?

Mr. BIRCH. No, sir; I do not recollect that, whether that telegram had anything to do with Governor Moore's visit or not.

Mr. BRANDEIS. I am not asking you whether it had anything to do with it. Others were forming their opinions as to whether it did or not, but you know that his visit here followed hard upon the receipt of that telegram, do you not?

Mr. BIRCH. No, sir; I could not say just now when Governor Moore was on here. I know that he had been on here.

Mr. BRANDEIS. When was it that you exercised that extraordinary diligence of telling Mr. Cunningham to hurry up his patents?

Mr. BIRCH. Every time I saw him.

Mr. BRANDEIS. One of them, then, was on December 8 or 9, when Mr. Guggenheim asked you to be sure to get from Mr. Cunningham an acknowledgment of the receipt of that telegram, was it?

Mr. BIRCH. Yes, sir. We naturally wanted to have it hurried up: of course we did. We were interested in having it.

Mr. BRANDEIS. And do you want this committee to understand, with all the influence that the Guggenheims and J. P. Morgan & Co. have in this country, and with all the investments they had up in Alaska, dependent upon coal, that they have never used, directly or indirectly, any influence in trying to get those patents issued, except your personal insistence that Mr. Cunningham hurry up and get his patents?

Mr. BIRCH. The Alaska syndicate, with all its power that you speak of, to my knowledge never directly or indirectly did anything to hurry along those patents, except to tell them that they were anxious to have them issued.

Mr. BRANDEIS. Now, I understand, Mr. Birch, you are very careful in your answers in drawing distinctions between the Alaska syndicate and persons who are members of that syndicate, and persons who are officers of that syndicate, and individuals who in some capacity, other than as officers of the syndicate, have property. I am not undertaking to do that, and I did not ask you about the Alaska syndicate. I asked you whether Messrs. Guggenheim and J. P. Morgan & Co., with all the influence and power they possess, whether you wished this committee to believe that none of that had been exercised in any way in an effort to get these patents issued by the Government?

Mr. BIRCH. That is what I wish.

Mr. BRANDEIS. You do wish that; you wish this committee to understand that?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Although their great investments in Alaska depend to so large an extent upon the opening of those coal fields?

Mr. BIRCH. What could we do? We had no control over the patents.

Mr. BRANDEIS. I think, Mr. Birch, that perhaps you might be able to answer that question better than I. I think that is all.

Mr. GRAHAM. Mr. Birch, let me get your idea a little more clearly, if you please. When you said that the coal up there in Alaska had no value, of course, I did not understand you, and I do not think you want to be understood as meaning that literally, do you, in the absence of a railroad?

Mr. BIRCH. Will you put the question again?

Mr. GRAHAM. When you state that the coal up there in Alaska, in the absence of a railroad, had no value, you do not want to be understood literally?

Mr. BIRCH. I want to be understood this way: It has remained up there for millions of years, and it will continue to remain up there until there is transportation and there is a market found for it.

Mr. GRAHAM. Would you say that before the discovery of the Klondike the gold up there had no value and that it would not be worth anybody's while to pay anything for an area containing that gold up there?

Mr. BIRCH. That is no comparison.

Mr. GRAHAM. Let me put it in another way. I want to get your idea merely. Suppose the syndicate owned the Cunningham group now and there was no railroad there, and they would issue first-mortgage bonds on that 2,560 acres of land, do you think those bonds would not sell for anything at all?

Mr. BIRCH. They would not finance anything of that sort.

Mr. GRAHAM. That is not quite my question. If your imagination is strong enough just imagine that I own it, and I would not have any more sense, perhaps, than to place a mortgage on it and issue first-mortgage bonds. Do you think they would have no value?

Mr. BIRCH. No, sir; I do not know who would buy them. I would not.

Mr. GRAHAM. Very well, I just wanted your judgment, that was all.

Mr. OLMSTED. You have never mined any copper from the Bonanza mine, have you?

Mr. BIRCH. No, sir.

Mr. OLMSTED. Do you expect to make any profits when you reach that?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. When the railroad is completed?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. When do you expect to complete the railroad, Mr. Birch?

Mr. BIRCH. Well, we hope to get the track laid to the copper mine this fall, but we will not complete the railroad and bridges—

Senator FLETCHER. Did you not state that there was \$6,000,000 worth of copper in sight in the Bonanza mine?

Mr. BIRCH. Yes, sir.

Mr. JAMES. What, in your judgment, would it cost to mine coal there upon the Cunningham claims, per ton?

Mr. BIRCH. I could not really say what it would cost; there has been no development in that country upon which you could base a real authentic opinion; it is all problematical.

Mr. JAMES. Are you any judge of coal land at all?

Mr. BIRCH. Not very much; I am not a coal expert.

Mr. JAMES. Then you think it would be wiser for the committee to take the judgment of coal experts upon the question of what it would cost to mine it, and what the land was worth from the standpoint of coal, than yours?

Mr. BIRCH. Possibly; yes.

Mr. JAMES. Did you advise the Guggenheim people that they could afford to expend the amount of money that they contracted to expend under this option for the Cunningham claims?

Mr. BIRCH. No, sir; I did not.

Mr. JAMES. Did you think it was a wise expenditure or contract upon their part?

Mr. BIRCH. Well, I do not know whether it was or not.

Mr. JAMES. Well, if you did not know whether it was or not, why were you hurrying Cunningham up to get this bad contract to dump upon your people?

Mr. BIRCH. I did not say that it was a bad one.

Mr. JAMES. I know, but if it was of that nature, if you had no mind upon the question as to whether it was a good one or a bad one, what actuated you?

Mr. BIRCH. I was instructed to do so.

Mr. JAMES. So the people who owned it, then, evidently had an idea upon that question, and they instructed you to see Cunningham and get this matter hurried up?

Mr. BIRCH. Yes, sir; they wanted it for the railroad; wanted the coal.

Mr. JAMES. Who was it that instructed you to do that?

Mr. BIRCH. I received that telegram—it was signed by Mr. Daniel Guggenheim—I think possibly Mr. Steele sent it.

Mr. JAMES. How long ago was that that you received that telegram—what year?

Mr. BIRCH. In December, 1907.

Mr. JAMES. Did you ever receive any other telegram from him about seeing Cunningham to get the claims hurried to patent?

Mr. BIRCH. No, sir; not that I know of.

Mr. JAMES. Did you ever receive any letter from him?

Mr. BIRCH. No, sir; not that I know of.

Mr. JAMES. Did you ever have any conversation with him personally relative to it?

Mr. BIRCH. With Cunningham?

Mr. JAMES. No. Daniel Guggenheim, about your seeing Cunningham, about seeing Cunningham and having the patents to that land hurried?

Mr. BIRCH. Mr. Guggenheim did not go into the details.

Mr. JAMES. I did not ask you that. I asked you whether or not you had ever had a conversation with him in which he expressed to you a desire to have you see Cunningham and have this matter hurried to patent?

Mr. BIRCH. I do not recall his having done that.

Mr. JAMES. What do you say that it would cost to construct this railroad line from Cordova to the Cunningham coal lands?

Senator ROOT. Fifty-two million dollars.

Mr. BIRCH. From the branch line over there—wait, I will give you the exact figures here. The cost of the railroad to the junction is \$2,250,000.

The CHAIRMAN. That is where you get across the—

Mr. BIRCH. That is, exclusive of the bridge.

Senator ROOT. From where?

The CHAIRMAN. From Cordova to the junction.

Mr. BIRCH. From Cordova to the junction. And the branch beyond that would be about \$2,120,000.

Senator PURCELL. Branch to where?

Mr. BIRCH. To the coal fields. There is a bridge, and there has already been expended on that 6 miles around Katalla about \$2,000,000 more. That is a very expensive bridge across the Copper River.

Mr. JAMES. What was the purpose of the Guggenheim syndicate, or, if I am wrong in calling it a syndicate, of Daniel Guggenheim himself in expending this amount of money to try to build a harbor at Katalla?

Mr. BIRCH. They were ill advised by Mr. Rogers.

Mr. JAMES. That was not my question; I asked you what was their object?

Mr. BIRCH. To have a harbor there, so that it would be nearer the coal fields.

Mr. JAMES. The Cunningham coal fields?

Mr. BIRCH. Well, the Bering River coal fields, and also to avoid going over the Copper River twice.

Mr. JAMES. When was this expenditure made at Katalla?

Mr. BIRCH. In 1906 and 1907.

Mr. JAMES. They had no option on this Cunningham coal field when it was done, did they?

Mr. BIRCH. No; it was contemplated to get into the coal field; that somebody would get some patents and that the coal would come out.

Mr. JAMES. How much did they expend there?

Mr. BIRCH. About \$1,000,000.

Mr. JAMES. And so you were going to capitalize this company under this option upon the Cunningham coal fields at \$5,000,000; issue 50,000 shares, I believe, at \$100 apiece?

Mr. BIRCH. Yes, sir.

Mr. JAMES. What, in your judgment, would that have sold for, that stock?

Mr. BIRCH. I do not know.

Mr. JAMES. That is all.

Mr. BRANDEIS. Mr. Birch, was I correct in understanding you to say that you had no knowledge or information in regard to J. P. Morgan & Company's interest in the Alaska Central through the Sovereign Bank of Canada?

Mr. BIRCH. No, sir; I do not know about it.

Mr. BRANDEIS. That is a matter you do not know anything about?

Mr. BIRCH. I do not know about that.

Mr. BRANDEIS. And when will you be able to give to the committee that information which has been asked for in regard to the investments?

Mr. BIRCH. Well, if I am dismissed to-day, I will see that it gets over here to-morrow; I will mail it to-morrow.

The CHAIRMAN. Are you through, Mr. Brandeis?

Mr. BRANDEIS. I think so.

The CHAIRMAN. Are you through, Mr. Graham?

Mr. GRAHAM. Yes, sir.

The CHAIRMAN. Very well, Mr. Vertrees.

Mr. VERTREES. Mr. Birch, you stated that you were not a coal expert, I believe?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. But have you made any study of coal conditions?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. How many times did you say you had been to the Alaskan coal fields?

Mr. BIRCH. I was there three times—twice in 1906 and once in 1908.

Mr. VERTREES. What is the extent of the Alaskan coal fields?

Mr. BIRCH. As reported by the Geological Survey, there are about 46 square miles.

Mr. VERTREES. What do you refer to there—what particular field?

Mr. BIRCH. Of the coal lands.

Mr. VERTREES. Where?

Mr. BIRCH. At Bering River.

Mr. VERTREES. Then, how much down at Matanuska?

Mr. BIRCH. Oh, about the same, as I understand it.

Mr. VERTREES. And the coal areas there, the well-known coal fields, how large are they, how many square miles?

Mr. BIRCH. Just a minute [referring to paper]. There are 12,000 square miles of coal-bearing rocks in Alaska, as reported by the United States Geological Survey.

The CHAIRMAN. Twelve thousand square miles, you said?

Mr. BIRCH. Of coal-bearing rocks.

The CHAIRMAN. In all of Alaska?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. If I understood you correctly, then, you consider Alaska as a very large territory, rich in minerals of various kinds and ores, undeveloped?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. And your people have gone in there and put money there with a view to its development by mining and also by lines of transportation?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. Have any of the citizens of Alaska ever been aggrieved by your efforts to invest your money there to build railroads?

Mr. BIRCH. No, sir; they have been benefited by it.

Mr. VERTREES. The particular offense seems to be elsewhere, does it not?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. Where do the Pacific coast people get their coal?

Mr. BIRCH. They get their coal from the local coal mines, from British Columbia, and from Australia, and even from Japan. The vessels come over from Australia empty to take back wheat and bring over the coal as ballast, and bring it in very cheaply.

Mr. VERTREES. So, in the matter of establishing the market of which you speak, even if the coal fields and areas of Alaska were developed, they would have to compete with the coal from these foreign countries you have mentioned, much of it coming in as ballast, as I understand you.

Mr. BIRCH. Yes, sir; and the coal that we are now using in the construction of our railroad, we import from British Columbia, because of its superior quality.

Mr. VERTREES. Do you know anything of the cost of mining coal in the United States?

Mr. BIRCH. Yes; I have some memorandums.

Mr. VERTREES. I wish you would state to the committee what may be considered as the range of prices of the cost of mining coal in the States; that is, in the coal areas of the States, that we may get some approximate idea or data to figure upon.

Mr. BIRCH (after referring to paper). The cost of coal mining, as reported by the Philadelphia and Reading Coal and Iron people, in

their annual report of 1902, was \$2.25; in the State of Washington it runs from \$1.60 to \$2.40; the cost of mining at Vancouver Island averages about \$1.75, and the cost of mining coal in British Columbia, because of the cheap Asiatic labor, is about \$1.40 per ton.

Mr. VERTREES. Do you know what is considered as the return realized per ton upon coal mined in the States—I mean bituminous coal and also anthracite coal—what experience has shown is the net return?

Mr. BIRCH. I know of one instance, of the New Rivers Collieries Company, where the price was only about four-tenths of 1 cent per ton.

Mr. VERTREES. What is considered the average return, do you know, in the United States—I speak now of bituminous coal?

Mr. BIRCH. Well, it runs from 1 cent or from a fraction of a cent up as high as 15 cents per ton.

Mr. VERTREES. What about anthracite coal—can you give an estimate as to that?

Mr. BIRCH. I can only give you the report, which shows in the neighborhood of 20 cents a ton.

Mr. VERTREES. Stated in other terms, that means, then, that is about the value of coal in the ground, is it, per ton?

Mr. BIRCH. No, sir; that is after it is mined there is that profit.

Mr. VERTREES. That profit?

Mr. BIRCH. Now, the value of coal in the ground itself is very much under that. There are coal lands in Virginia and Kentucky that do not earn more than a cent and even under a cent a ton in the ground.

Mr. VERTREES. You mean good, workable veins?

Mr. BIRCH. Good, workable veins.

Mr. VERTREES. After all, the question of development of any country is the question of transportation, is it not?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. And that is largely a question of fuel of one kind or another?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. Now we will pass from that, Mr. Birch, to some other matters. Who is Mr. M. K. Rodgers? You have mentioned him.

Mr. BIRCH. He was the engineer who was employed by the Alaska Syndicate to build the railroad, and he has since been discharged for incompetency.

Mr. VERTREES. Where does he live?

Mr. BIRCH. I think he lives in Seattle.

The CHAIRMAN. What is his name?

Mr. BIRCH. M. K. Rodgers.

Mr. VERTREES. Mr. Birch, you have mentioned that your syndicate, or the gentlemen represented, expended about a million dollars in an attempt to establish a harbor at Katalla Bay?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. And if I understood you correctly you stated that that was in the years 1906 and 1907?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. It was then deemed impracticable and abandoned, the work was?

Mr. BIRCH. Yes, sir; Mr. Rodgers had charge of the work at that time. We sent competent engineers up there to look it over and they decided that it was money thrown away.

Mr. VERTREES. Now, was it during the time you built the 5 or 6 miles of railroad you have mentioned from Katalla?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. When the harbor was abandoned was that railroad construction abandoned?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. Now, that work having been done at that time, then this is the fact, is it not, that at the time the negotiations were pending between you and the Cunningham group or the representatives of the Cunningham group looking to the acquisition of these lands, at that very time you had expended a large amount on this harbor and were constructing this railroad?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. Were you building one anywhere else at that time?

Mr. BIRCH. No, sir; we were not building—

Mr. VERTREES. So that—

Mr. BIRCH. Excuse me. In 1906—we were doing some work at Valdez then.

Mr. VERTREES. You had entirely abandoned that then?

Mr. BIRCH. Yes, sir; but that had no connection with the coal roads at all; it was still under advisement.

Mr. VERTREES. But the particular point I wish to get at is that at the time you undertook negotiations with the representatives of the Cunningham group, or that is, with Mr. Cunningham, this harbor—large sums had already been expended on this harbor and part of that road had been constructed.

Mr. BIRCH. Yes, sir.

Mr. VERTREES. So that it was with the understanding, was it not, and within the contemplation of the parties that that road should be built from Katalla Bay up into these coal fields?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. At the time that option contract was proposed?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. And they had the right to understand that the negotiations rested upon that assumption, did they not?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. You all did?

Mr. BIRCH. We had no particular plans in mind at that time.

Mr. VERTREES. Now, who approached first on the subject; did Mr. Cunningham approach your people or did you approach him; do you remember how that was?

Mr. BIRCH. I really do not know how it first came about. I had met Mr. Cunningham up in that field, but there was no discussion about the lands at that time. We were naturally brought together. I was up in that country in the coal field looking over the field.

Mr. VERTREES. If I understood you, you were really brought together so as to negotiate, if at all, through you rather than any other person?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. That is, as the representative of your side?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. Conducted by you?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. Though finally Mr. Eccles closed this matter. It was closed down at Salt Lake City in July, was it not?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. July 20, 1907?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. But the negotiations had been through you, and you had several conversations with Mr. Cunningham. I believe you said?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. Now, isn't this a fact, that after one or two conversations it came to this, that the propositions which were contained in the resolutions which were read and exhibited there as resolutions of a meeting of these people, held May 15, 1907, were really suggested and dictated by your people and handed to him, to Mr. Cunningham, with a view to having him present these various propositions to his people? Do you know that to be a fact, or do you not?

Mr. BIRCH. I am not certain about that.

Mr. VERTREES. You do not know?

Mr. BIRCH. I do not know about that.

Mr. VERTREES. You do know that this is a fact, do you not, Mr. Birch, that Mr. Curtis H. Lindley, who wrote this letter of July 20, 1907, to Mr. Eccles, of Salt Lake City, Utah, was the attorney for your people at that time?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. And that he drew this option contract?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. And that in this letter to Mr. Eccles, on the very day that contract was written, do you not know that he informed Mr. Eccles, and that it has been the understanding, based upon the information from that time on, that unless that option contract should be subsequently ratified by the other people it was not to be binding on them?

Mr. BIRCH. Yes.

Mr. VERTREES. Speaking specifically now with reference to that matter, does not the letter of Judge Lindley, the man who drew it, say—I quote now from the letter:

In the present instance there are 33 factors with 33 minds of their own. They themselves have appreciated the difficulty in securing concerted action and have devised the plan of conveying to a trust company whose action is to follow instructions from a committee.

Messrs. Campbell, Cunningham, and Moore think that their action taken at the conference here will be ratified by practically all of the entrymen. Should there be any dissent by any of the owners the effect their nonparticipation will have on the venture will depend on the relative situation of their respective holdings in the composite and the position which they occupy with reference to the general plan of mine development. I do not anticipate that any serious complications will arise even if one or more of the owners should decline to participate.

About all that can possibly be accomplished at this time, it seems to me, is to secure the signatures of the three gentlemen named, as a committee, and trust to the moral effect of their action upon the few of their associates who have thus far not conveyed to the trust company.

The gentlemen who have signed the memorandum are first-class men of high standing and large affairs, and I do not doubt that they will secure the cooperation of all or practically all of their associates. I think it safe to proceed with the examination upon the assumption that there will be no nonparticipation whose holdings will materially impede the orderly development of the property.

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Now, to get it clear, I understand this to be your statement: That it was the understanding of your attorney and your people at that time that it was necessary, in order to find the others, for Mr. Cunningham and his associates subsequently to secure their ratification?

Mr. BRANDEIS. How can he know anything about that, about their understanding? He was in Alaska; he went up in June, and he returned in October or November.

Mr. VERTREES. I believe I let you have your way pretty well, Mr. Brandeis.

Mr. BRANDEIS. Perfectly; yes, sir; but why do you ask him a question that you know he can not answer?

Senator ROOT. If there are any objections to be made, I believe you should make them to the committee.

Mr. BRANDEIS. Yes, sir; you are certainly right about that, Senator.

Senator ROOT. Is there any objection made to this question?

Mr. BRANDEIS. I think it is proper to call attention to the fact that Mr. Vertrees has asked this witness a question which he can not possibly know.

Senator ROOT. Let us find out whether this question is objected to. Do you really object to it?

Mr. BRANDEIS. I desire to call it to the attention of the committee; but if the committee says it desires to have that question answered, of course I will not object.

The CHAIRMAN. It seems to me we have had a good many questions of this kind asked heretofore which are purely questions of inference and they are all of the same character.

Mr. VERTREES. I beg leave, Mr. Chairman, to say in defense of this that several times when Mr. Steele interfered, Mr. Brandeis said, "I want to see whether he does know or not." Now, I asked Mr. Birch if he knew, and if he does not know that ends it. It was not for an inference that I asked. I asked him if he did not know that that was the position of those people—that they understood it that way. He talked to them constantly—his own people—so I do not think it is a—

Mr. MADISON. I think the question ought to be answered if the counsel asks for it, under the latitude allowed.

Mr. VERTREES. How about that, Mr. Birch? I asked you whether or not you knew that it was the understanding of your people when that letter was written and when that option contract was made, that in order for it to be binding, among other things it was necessary for Mr. Cunningham and his associates to secure the subsequent approval or ratification of those they purported to represent?

Mr. BIRCH. It was generally understood that they would do so.

Mr. VERTREES. But that they were to do so, is what I mean.

Mr. BIRCH. They were to do so; yes, sir.

Mr. VERTREES. This letter of Judge Lindley's correctly states the position, does it, as you understood it?

Mr. BIRCH. Yes; as I understand it.

Senator FLETCHER. How do you know anything about that? You were in Alaska, and had been in Alaska ever since June, and this occurred on the 27th of July. How do you know anything about that?

Mr. BIRCH. How do I know?

Senator FLETCHER. Yes.

Mr. BIRCH. From reading the letter and from talking with the people.

Mr. VERTREES. What my question involves was whether he had talked with these people.

Senator FLETCHER. What people could you talk to when you were in Alaska?

Mr. BIRCH. I have been back from Alaska. He did not mean the specific time when that was drawn.

Senator FLETCHER. Yes; he meant the specific time—at the time this letter was written and at the time this agreement was—

Mr. BIRCH. I did not understand the question that way.

Senator FLETCHER. Then I call upon the stenographer to read that question last asked by the counsel. I do not like this sort of talk. I am a member of this committee, and I am entitled to make some inquiries of this witness.

Mr. VERTREES. Perhaps, Mr. Senator, that was improper, and I want to withdraw it.

Senator FLETCHER. I do not want any questioning about it. Let's have the stenographer read the question.

(The stenographer read the question, as follows:)

Mr. VERTREES. How about that, Mr. Birch? I ask you whether or not you knew that it was the understanding of your people when that letter was written and when that option contract was made—

Senator FLETCHER. He asks you, Mr. Birch, whether or not you knew it was the understanding of your people when that letter was written. Now, do you see any such language as that?

Mr. BIRCH. I was not there.

Mr. VERTREES. Wait a moment. I must insist on my question. I asked the witness if he knew that when those things were done that that was their understanding. Now, the date and the time when he knew it is a very different proposition. He might have found it out a month afterwards or a year afterwards or a day afterwards. That is my proposition.

Senator FLETCHER. That is not the question at all, as I understand it. It is not a question of whether he knew this or whether he knew that. The question is, did he know when that contract was signed and when that letter was written the understanding of the parties. It does not make any difference when he knew it.

Mr. VERTREES. As originally asked, I thought the question was very clear. I will change the question to relieve it from difficulty.

Do you know now, through information received from your people, your principals, your attorneys, and those you have been representing, that they have understood from the time that contract was entered into, namely, the 20th of July, 1907, and when that letter was written, that that letter correctly states the situation, and that they understood it to mean that Mr. Cunningham and his people were working to secure subsequently the ratification of their principles in order to bind them?

Mr. BIRCH. That is my understanding, and always has been.

Mr. VERTREES. I think that is pretty clear.

Now, Mr. Birch, is it not also true that as early as January, 1908, or February, 1908, that, in conversation with you, Mr. Cunningham claimed that the contract was not obligatory, for two reasons. One,

that it was entered into upon the assumption that your people were to build the railroad from Katalla, where you had undertaken to build the breakwater and harbor, and the other that it was to be ratified by his principal or the other associates of the group, and that he insisted and contended that it was no contract for both reasons. First, that you had abandoned that road and started it away from Katalla, and also that his principals had not ratified it. Did he, or did he not, make these representations to you?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. What time was that, Mr. Birch?

Mr. BIRCH. That was along in January or February, Senator, of 1908; after we had changed our plans.

The CHAIRMAN. Go on, Mr. Vertrees; that is all.

Mr. VERTREES. I will ask you further, Mr. Birch, if it is not a fact that from that day to this neither you nor any representative of the Cunningham people have ever insisted to him, by letter or otherwise, that the contract was in force?

Mr. BIRCH. I never have. I do not know of anybody that has, either.

Mr. VERTREES. Has it not just stood from the time that Cunningham told you that; upon that statement back in January or February, 1908?

Mr. BIRCH. Yes, sir.

Mr. VERTREES. I will ask you further with reference to that contract whether or not you—that option contract I mean—whether you have understood that your people bound themselves to take the output of those mines in the event the road was constructed and went through there?

Mr. BIRCH. The contract states only as we demanded in the beginning on the output.

Mr. VERTREES. Do you recall how many persons there were in that objection?

Mr. BIRCH. No; I could not say definitely. I think there is a list here somewhere.

Mr. VERTREES. To refresh your memory, I will read. Does not the contract say:

A meeting of said entrymen was recently held in the city of Spokane at which 25 out of the 33—

Mr. BIRCH. Yes, sir; it so states.

Mr. VERTREES. You stated in your testimony, in your previous examination, with reference to these coal fields in Alaska, that the coal strata was rolled and pinched. What do you mean by that, Mr. Birch?

Mr. BIRCH. I mean that it is not uniform in thickness throughout the field.

Mr. VERTREES. What does "rolled" mean?

Mr. BIRCH. The footwall rolls this way [indicating]. It pinches in some places; widens in others.

Mr. VERTREES. When you say it pinches you mean that it varies in some places from what it is in others?

Mr. BIRCH. Pinches in some places; widens out in others.

Mr. VERTREES. My attention is called to a statement of yours that some man from whom you were getting coal was stopped by the Government.

Mr. BIRCH. That is my understanding.

Mr. VERTREES. Do you know what the coal regulations are on that subject? The coal mining regulations?

Mr. BIRCH. I have been informed by our attorneys that you can not go upon any of the government lands and mine coal without first obtaining a patent.

Mr. VERTREES. I wish in this connection, Mr. Chairman, to read regulation No. 6, which appears on page 698 of the document we know as Senate Document 248:

6. There is no authority under which a coal mine upon public lands, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the *opening and improving* of the mine as a condition precedent to the right to apply for patent.

Mr. VERTREES. A letter dated August 17, 1907, was introduced by you, addressed to Mr. Daniel Guggenheim from Clarence Cunningham, and the interpretation was put upon that letter by the question that it meant that there had been a promise that so far as these Cunningham lands were concerned, the patent should be forthcoming in ninety days. I call your attention to that and ask you to read to the committee the last paragraph of that letter that they may have concisely in their mind what it does say.

Mr. BIRCH (reading):

Referring to your message regarding patents and your request that we have the same issued at once; their issuance is, of course, a matter entirely at the pleasure of the government, and we can not hurry it in any way, although we understand that the Commissioner of the General Land Office has stated that everything will be cleaned up inside of ninety days, and as there are no contests in any of our claims I feel that the patents will be issued in the ordinary course of the department's work.

Mr. GRAHAM. What is the date of that letter again, Mr. Birch?

Mr. BIRCH. August 17, 1907.

Mr. VERTREES. You were asked with reference to the influence that may or may not have been exerted upon the Commissioner of the Land Office, or any other public officer, with respect to the issuance of patent on these lands. Did you or not approach the commissioner or any other person on that subject—any other official?

Mr. BIRCH. I went to Secretary Garfield. I went and presented our case—about building the railroad and changing our operations from Valdes to Cordova. We had gone to a great expense and it was essential to the development of that company to have coal, and asked him if he would not do what he possibly could to urge things along and get some workable legislation—that the laws as they were, were inadequate. I urged him to try to do something.

Mr. VERTREES. What was it he told you?

Mr. BIRCH. He did not give me much satisfaction.

Mr. VERTREES. Did you go to anybody else?

Mr. BIRCH. Later on they passed a bill which became a law in 1908. It was a very impractical law in my opinion and I saw Herbert Parsons at that time—it had passed the Senate—and I told him in my opinion it was a rotten law, and that it was unconstitutional. He seemed to take offense at that and told me that he was a lawyer and that he had drawn it up for Mr. Garfield.

The CHAIRMAN. Who told you that?

Mr. BIRCH. Mr. Parsons.

And that it was the bill that Senator Flint ordered out of the committee. Now, I wrote Herbert Parsons at his request and later—

Senator SUTHERLAND. Did Senator Flint and Mr. Parsons agree that that was constitutional?

Mr. BIRCH. I do not know anything about that. But it was similar to a law under that bill.

The CHAIRMAN. That was the bill recommended by Secretary Garfield?

Mr. BIRCH. Yes, sir. I am giving you the conversation I had, Senator.

The CHAIRMAN. Go on.

Mr. BIRCH. He asked me to write him about it.

Mr. MADISON. That is Parsons?

Mr. BIRCH. Mr. Parsons requested me to furnish him with three copies, as he wished one for Mr. Garfield, one for himself, and one for President Roosevelt. Here is the letter.

Mr. OLMSTED. We would like to have you read it.

Mr. BIRCH. My throat is very dry, and it is somewhat of a tax upon me to read this letter, but if you gentlemen wish—

Senator PURCELL. I will read it [reads]:

WASHINGTON, D. C., May 22, 1908.

HON. HERBERT PARSONS,
House of Representatives, City.

DEAR SIR: I beg to call your attention to Senate bill No. 6805 recently passed that body, entitled "An act to encourage the development of coal deposits in the Territory of Alaska."

The bill as drawn would have the effect intended and indicated by its title were it not for the provisions of section 3 thereof, which is in the following words:

"That if any of the lands or deposits purchased under the provisions of this act shall be owned, leased, trustee, possessed, or controlled by any device permanently, temporarily, directly, indirectly, or in any manner whatsoever so that they form part of, or in any way effect any combination, or are in any wise controlled by any combination in the form of an unlawful trust, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, or of any holding of such lands by any individual, partnership, corporation, association, mortgage, stock ownership or control, in excess of two thousand five hundred and sixty acres in the District of Alaska, the title thereto shall be forfeited to the United States by proceedings instituted by the Attorney-General of the United States in the courts for that purpose."

That section if retained in the bill is bound to retard rather than to encourage the development of the coal deposits.

The aim of the Government is to conserve the natural resources of the country to the end that they may be held for the benefit of all the people under conditions that are most economical. It is a well-recognized fact that a large area of coal lands can be more economically developed and the coal mined and marketed by one management than under several managements.

The bill itself limits the holding of lands containing coal to 2,560 acres and prevents at any time the owners or controllers of that number of acres from associating with the owners or controllers of any other lands that may be acquired under this act in any way even for the purpose of development.

To thus restrict that development of limited areas regardless of natural conditions means that the actual development of the coal deposits will not only be retarded, but in many cases actually prevented.

For instance, the owner of 2,560 acres is only permitted to develop or operate that one claim, even if the coal in this area is exhausted.

He builds his coal road, runs his tunnels to the rear or extremity of his holdings, and begins work there in order to get all his coal, and draws his pillars as they come that he may not leave 25 to 50 per cent of his coal to support the roof. As he draws his pillars his mine is absolutely ruined. Back of him and beyond his holdings lie vast areas of good coal. It can only be obtained through his mine which has been ruined, thereby blocking the future development of areas aggregating many times his holdings. This particular condition obtains in Alaska, where the formation is very irregular, broken, and mountainous, and owing to the inaccessibility and elevation of some of the coal deposits it is impossible to build a railroad to all the fields, which

can only be reached by following the natural water courses, and the development of these mountainous and inaccessible portions of the field can only be made through tunnels leading from the water courses and the railroads, and the coal must consequently be brought through the holdings of the owners of lands lying next to the point of transportation, which is absolutely prohibited by the terms of said section.

Section 3 of the Senate bill is intended to prevent monopolization of large areas of coal lands in Alaska, but, as a matter of fact, it would have the direct result of making the holdings of small locators almost worthless.

To illustrate this point: Take the case of two locations of 2,560 acres each, as provided for in this bill, with several small claims lying between them. These small claims, while containing coal, might not contain sufficient to warrant independent development, and in section 3 the adjoining owners of the larger areas would be prevented from in any way cooperating in their development. Hence these smaller claims would be absolutely worthless and the coal therein would never be mined.

Said section 3 produces inconveniences that were probably not realized when it was drawn. The two just mentioned, which circumscribe the opportunity for the complete development of all the inaccessible deposits, alone make the provisions of said section exceedingly unwise. Obviously, any measure to be passed should be adequate to effect the actual development of the coal deposits and to conserve them.

The Government itself is deeply interested in that problem. Coal is needed for its fleet upon the Pacific, and the coal in the Alaskan coal fields has been tested by the Navy Department and found to be of the very best quality for steaming purposes. If this coal can be developed and marketed it means that the cost of coal to the Government will be greatly reduced.

It is well said in the report of the House Committee on Public Lands on this bill:

"Conditions are such in the Alaskan field, particularly where locations have already been made, that a large acreage is required for a successful coal operation, as there is no immediate local market for these coals. As a market must be sought the entire length of the Pacific coast of the United States, none but large operations can be made successful, and this condition is accentuated by the character of the country in which most of the coal heretofore located occurs, it being such that openings and operations can only be conducted on the cropping accessible to transportation. The lands lying back of such cropping can only be successfully mined through such openings.

"Legislation proposed will enable the pioneers who discovered and prospected these fields to realize upon their claims and will make possible a much-needed development in the Alaskan fields. At this time the Pacific coast of the United States is largely dependent for its coal supply on the coal mines on Vancouver Island in Canadian territory.

"The opening of these American fields will result in producing additional competition on the Pacific coast and unquestionably result in the reduction in the price of coal in that region.

"These fields can only be reached by the construction of very expensive lines of railroad, the construction of which is now halted owing to the uncertainty of coal development, but which will undoubtedly be vigorously prosecuted when provision is made for the perfection of these entries and the consequent large investment necessary for a coal operation in that region."

It is respectfully suggested, that care should be taken in the proposed legislation, to avoid any provision which will prohibit the cooperation of coal-land holders in cases of the kind to which reference has been made, for the purposes of development, or which will prevent the development of those claims located back of those situated on the water courses, from which transportation must be had. Section 3 under consideration is, for the reasons stated, very objectionable.

Assuming that the purpose in view is to prevent combinations in restraint of trade in the mining or selling of coal, which is to be commended, the provision in section 2 of the House bill was deemed by the Committee on Public Lands to be sufficient. That provision, while preventing such unlawful combinations, will also relieve coal-land locators of the hardships necessarily involved in the enforcement of section 3 of the Senate bill, to which reference has been made, and will also make possible the development of all the coal locations under consideration.

This bill is applicable only to the coal lands which have been located by pioneers in the coal regions prior to the withdrawal of those lands from location, and represent but comparatively a small portion of the known and available coal lands of equal quality. The Government will still retain absolute control of the great coal fields of Alaska, and it is therefore in its power in future operations to make any further safeguard that is deemed advisable. The aim of the proposed legislation is to enable the pioneers who during the past years have located coal lands in Alaska prior to their withdrawal by the Government to perfect their titles and to enable them to begin

the mining of coal. The acreage included in the located lands is very small compared to the large known areas of equally good coal in Alaska, and this bill will affect only that limited area so located, the Government retaining full control over the remainder.

In this connection permit me to say that I am a mining engineer and have spent the greater portion of the last ten years in Alaska, and am personally familiar with the conditions that exist there. Last year I made a reconnaissance trip of 800 miles on horseback, accompanied by Prof. J. D. Irving, head of the geological department of Yale University, studying the conditions, physical and otherwise, existing in the interior of Alaska. My experience and observations lead me to say that I feel confident that the statements herein made are borne out by the conditions so existing, and it is clear to my mind that sufficient capital can not be secured for the development of the coal lands deposits which are the subject of the proposed legislation if section 3 of the Senate bill, as drawn, is retained in it.

Very respectfully,

(Signed) STEPHEN BIRCH.

Mr. BIRCH. That is the letter that I addressed to Mr. Parsons before that bill was passed in the House and after it had passed the Senate. And that is the only active part that I took in the way of legislation; it was to call attention to a very poor law in my judgment. Because, under that law, if a man was interested in one section and his son was interested in another section, and the father died, under that law the man could not inherit it.

Mr. JAMES. When you went to see Mr. Garfield about this matter was that after this option was taken upon the Cunningham land by the syndicate which you represented?

Mr. BIRCH. I do not think so. I think it must have been after that.

Mr. JAMES. Mr. Garfield was Secretary of the Interior then, was he not?

Mr. BIRCH. Yes, sir.

Mr. JAMES. Did you explain to him anything about the interest of this syndicate in having these lands patented?

Mr. BIRCH. No, sir; I did not have any discussion with him.

Mr. JAMES. You never told him why you were interested in having it so speedily patented?

Mr. BIRCH. No, sir; I never discussed those patents with Secretary Garfield.

Mr. JAMES. But your conversation with the Secretary related to those coal lands, and getting them patented?

Mr. BIRCH. Oh, no; I was urging him to pass some law—to recommend some law to be passed.

Mr. JAMES. Authorizing the consolidation of more acres than were allowed under the laws then existing.

Mr. BIRCH. Yes.

Mr. VERTREES. I have finished, Mr. Chairman.

Mr. BRANDEIS. Mr. Birch, in answer to some questions of the committee in regard to wharfage, I understood you to say that every one of the other lines had wharfage as well as yours?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Well, now, was there not some special effort made by you to monopolize wharfage at certain points?

Mr. BIRCH. Not that I know of.

Mr. BRANDEIS. Do you not remember any points?

Mr. BIRCH. No.

Mr. BRANDEIS. How about Cordova?

Mr. BIRCH. I do not know as we tried to monopolize any.

Mr. BRANDEIS. Now, let me read you a letter and call your attention to one of the letters which is in evidence in this case. It appears

page 136 of the list, the chronological list, a letter of H. R. Harriman. You know who he is; one of the coal claimants.

Mr. BIRCH. That is the Lippey-Davis Harriman?

Mr. BRANDEIS. Yes.

Mr. BIRCH. Yes.

Mr. VERTREES. What is the date?

Mr. BRANDEIS. September 5, 1908, addressed to the Hon. Fred Bennett, The Normandie, Washington, D. C.

MY DEAR FRIEND: Our Mr. Lippy has just returned from a trip to the Katalla country and a visit also to Cordova and Valdez. This is his first trip, and he comes back very enthusiastic with the possibilities and the resources which we have there. He also got a very good grasp of the transportation system, and he comes back thoroughly imbued with the idea that we have got to take care of ourselves and provide our own transportation, as we can expect nothing from the Guggenheims, at least nothing that we would care to take.

Their recent treatment at Cordova of Jack Dalton (of Dalton trail fame) seems very significant, and while neither he nor we wish to start anything at the present time, still we believe you, or some one in the department, ought to know something about it. Mr. Dalton is not a particularly lovable character, but he has the rights of an American citizen. As we understand it, he has twice started a wharf in the vicinity of Cordova, and both times the Guggenheims have built out and surrounded his wharf, so no boats could approach it; and another time they had him arrested and thrown in jail for three days, and sent their men out and tore down his improvements and threw them into the bay.

Do you remember that circumstance, Mr. Birch?

Mr. BIRCH. I do not remember any circumstance about his being thrown into jail.

Mr. BRANDEIS. What do you remember?

Mr. BIRCH. I remember that Jack Dalton, out of nothing more or less than graft, went to work and built a little house alongside our railroad; simply built to oppose us; and then there was another man come around and said if a certain amount was paid there would be no trouble. I know that. Not long ago a man came to me with this proposition. He said:

Of course I can not say this definitely, but I know Jack very well, and I do not want to have any trouble up there at all, and he has some money; it is all he has to put in there. Would it not be cheaper to buy up Jack than to have any trouble up there?

Mr. BRANDEIS. That is all you remember about it?

Mr. BIRCH. Yes; that is all I remember about it.

Mr. BRANDEIS. Now, in answer to Mr. Vertrees I understood you to say that the objection to the Guggenheims having control in Alaska was wholly an objection outside of Alaska. Was that what you meant to say?

Mr. BIRCH. I mean, a just one, yes—

Mr. BRANDEIS. Without going into the question of whether it was just or unjust, was that not what you testified to?

Mr. STEELE. Did not Mr. Birch testify to that?

Mr. BRANDEIS. What was it that you testified to?

Senator ROOT. Aggrieved, I think, was the word.

Mr. VERTREES. I asked if the people of Alaska were aggrieved other than others—people in other parts of the country.

Mr. BRANDEIS. Now, let me call attention to the next sentence in this letter:

It is such things as this, and the voting scandal of the recent election, and the more general belief that they have purchased an interest or control in the Cunningham properties, that makes Mr. Lippy and ourselves very fearful that the same treatment may not be in store for the independent coal operators.

Now, did you mean to have the understanding that that prohibition was confined to those outside of Alaska?

Senator ROOT. That is not his letter.

Mr. BRANDEIS. Oh, no; this is Mr. Harriman's letter.

The CHAIRMAN. Yes; I think the objection made by the Senator from Florida will apply here also.

Mr. VERTREES. Harriman lives in Seattle.

Mr. BRANDEIS. I asked whether it was only those outside of Alaska who had these apprehensions. Mr. Birch has been for ten years there and he ought to know something about the feeling there.

Mr. BIRCH. Mr. Harriman wrote that letter from Seattle and he is operating from Seattle. Most of those people are soreheads, or something of that kind.

Mr. BRANDEIS. Alaska is not immune from the article called sore-head, is it?

Mr. BIRCH. I am speaking about the justice of it.

Senator PURCELL. I want to ask a question of Mr. Birch; just a short one. Mr. Birch, you stated when questioned about your testimony that you gave before the Committee on Territories, that you did not know it was to be made public. Is that true? That is, you did not know it would be printed in the newspapers?

Mr. BIRCH. I did not realize at the time.

Senator PURCELL. Now, Mr. Birch, is it not a fact that you or Mr. Steele wrote to the Committee on Territories before you came here asking that that committee would give you a hearing upon the interests of J. P. Morgan & Co. and the Guggenheims in Alaska?

Mr. BIRCH. I did not. I think Mr. Steele possibly did.

Senator PURCELL. It is a fact, is it not, Mr. Birch, that you and Mr. Steele came over here specially to appear before that committee to make known to the committee all the dealings of these firms in Alaska?

Mr. BIRCH. Yes, sir.

Senator PURCELL. That was your purpose in coming here?

Mr. BIRCH. Yes, sir.

Senator PURCELL. And is it not a fact, Mr. Birch, that at the request of Mr. Steele, in your presence, before that committee, it was made a public hearing?

Mr. BIRCH. Yes, sir.

Senator PURCELL. Mr. Steele asked that it be made public, did he not?

Mr. BIRCH. Yes, sir.

Senator PURCELL. Now, you came over here, did you not, fortified to tell all you knew and to tell it accurately about the interests you represented in Alaska?

Mr. BIRCH. Yes, sir.

Senator PURCELL. And you did tell it accurately?

Mr. BIRCH. Told it as far as I knew; yes, sir.

Senator PURCELL. Now, having asked that it be made a public hearing, you knew that reporters would be present, did you not?

Mr. BIRCH. I do not think that I realized it at the time.

Senator PURCELL. You did not realize it?

Mr. BIRCH. Hardly.

Senator PURCELL. You made no complaints of the publicity given to it when you asked for it?

Mr. BIRCH. No; you could not.

Senator PURCELL. What you said there, Mr. Birch, was true, so far as you know, was it not?

Mr. BIRCH. Yes, sir.

Mr. BRANDEIS. Now, is not there another fact of which I am reminded by Senator Purcell's question? Is it not a fact that you or Mr. Steele or some one representing you personally prepared, before that hearing, a statement of the substance of what you were going to testify to, and circulated it among the press in order that they might have a report?

Mr. BIRCH. I did not do any such thing.

Mr. BRANDEIS. Do you mean to say that it was not done?

Mr. BIRCH. I do not know what was done.

Mr. BRANDEIS. Do you mean to say that this matter was not taken up with the publicity agency in order that it might be circulated?

Mr. BIRCH. It might have been.

Mr. BRANDEIS. Only you mean to say that you did not do it?

Mr. BIRCH. I did not do it, and I do not think it was done by us or our people at all. Not surely the second day.

Mr. BRANDEIS. Not the second day. You did not intend to have come out all of the things that did come out. But you had prepared a statement—I mean not individually necessarily—but you, or your associates, or subordinates, had prepared a statement for publication in the press?

Mr. BIRCH. No, sir.

Mr. BRANDEIS. Which was distributed in advance of the hearing?

Mr. BIRCH. I did not.

Mr. BRANDEIS. You know it was done, don't you?

Mr. BIRCH. No; I do not.

Mr. BRANDEIS. Didn't you hear it was done before I called it to your attention?

Mr. BIRCH. I have talked with one man who came over here and gave him some information myself.

Mr. BRANDEIS. I am not talking about any oral information. I am talking about a typewritten statement of what you desired, or what your syndicate desired, to have printed and spread in the country.

Mr. BIRCH. No, sir.

Mr. BRANDEIS. Well, perhaps Mr. Steele will know.

The CHAIRMAN. Perhaps you do not have a publicity bureau like some other institutions?

Mr. BRANDEIS. I am inclined to think they do, and I think we can prove that they have.

The CHAIRMAN. Are you through with this witness? We will continue until you get through with him if it will take a few minutes.

Mr. BRANDEIS. There is one other question that comes to me, Mr. Birch. You knew of one Bruneau? You have heard of one Bruneau in connection with the transportation system in Alaska?

Mr. BIRCH. Dick Bruneau; yes, sir.

Mr. BRANDEIS. Do you recall that this Bruneau attempted to build a railroad from Katalla at the same time that the syndicate commenced its work, and that there were shot and killed several of Bruneau's laborers at that time?

Mr. BIRCH. I know that the Alaska Pacific Railway and Terminal Company had got into difficulties with the Copper River and Northwestern Railroad there.

Mr. BRANDEIS. It was the Alaska Pacific Railway Company with which Bruneau was connected.

Mr. BIRCH. I think so.

Mr. BRANDEIS. And the difficulties or the unfortunate occurrences were that in some way several of the laborers who were undertaking for that company to build their lines out of Alaska were killed or injured?

Mr. BIRCH. It was their own fault.

Mr. BRANDEIS. It may have been their fault, but it was because they interfered with the Guggenheim-Morgan property, was it not?

Mr. BIRCH. I do not know that you could put it in that way.

Mr. BRANDEIS. Is it not the fact that the reason that these men were interfered with and the reason they were killed—

Mr. BIRCH. It was because they attacked our men.

Mr. BRANDEIS. Not because they attacked your men, but because they undertook to build the road and you undertook to prevent it.

Mr. BIRCH. No, sir; we were undertaking to build a road and they came after us.

Mr. BRANDEIS. Is that so?

Mr. BIRCH. It is absolutely so.

Mr. BRANDEIS. Is it not the other way; that you claimed they had no right to build, but they undertook to build, and this altercation took place which resulted in death and injury?

Mr. BIRCH. No, sir; we had the right of way. We were going about our business there quietly. We were building a railroad at the Copper River to Katalla and we had the right of way, and were going ahead about our business. This outfit went so far as to go ahead and put a cable outside of our line, and stretched that cable outside of our right of way, and every time we would send a man there they would jerk that thing up with a steam winch, and they tried to interfere with us in every way. They were the ones that interfered with us. We wanted to go ahead with our work, and we were going ahead with it when they interfered with us.

Mr. BRANDEIS. Do you mean to say that by the stretching of that cable as it came up they actually went there and committed suicide?

Mr. BIRCH. That was one reason. If a man got onto it he would commit suicide. If a man got on it of course he would be killed.

Mr. BRANDEIS. Was that the way the deaths occurred?

Mr. BIRCH. No, sir; I think there was a scrap in there.

Mr. BRANDEIS. How did it occur?

Mr. BIRCH. I do not know how it was—by a pick or shovel, and somebody got hit in the head.

Mr. BRANDEIS. Some of the Guggenheim men killed some of the other men?

Mr. BIRCH. Yes, sir; and some of the Guggenheim men were pretty nearly killed, too.

Mr. BRANDEIS. Were they any of them wholly killed?

Mr. BIRCH. I think there were four or five of them in the hospital.

Mr. STEELE. Mr. Chairman, may I ask a question right now on this very matter?

The CHAIRMAN: Yes, you may.

Mr. STEELE: Is it not a fact that at that time at Katkana no men were killed?

Mr. BIRCH: I do not remember that there were any men killed there.

Mr. STEELE: It is impossible that there were no deaths in the question put to you by Mr. BIRCH, as we assume that some things happened there. Do you not also remember that there was a fight over that strip of land between the Alaska Railway and the Copper River and Northwestern Railway?

Mr. BIRCH: Yes, sir.

Mr. STEELE: And it was settled by the court in the lower court.

Mr. BIRCH: It is a fact that the court later on affirmed it.

Mr. STEELE: It is a fact that the court later on affirmed it.

Mr. BIRCH: Yes, sir.

Mr. STEELE: What happened to that case when it was in the United States circuit court of appeals?

Mr. BIRCH: I understand that that affirmed it.

Mr. STEELE: The judgment was affirmed.

Mr. BIRCH: Yes, sir.

Mr. STEELE: Now, from the testimony of Mr. BIRCH, you see enough there is a letter from Mr. J. E. HAMPTON, who was the engineer in charge of the Alaska Railway and Terminal Company's operations at the time this trouble occurred. This letter was written by him, and this is a copy of the letter that he sent to the McClure Company, on January 15, 1907, with a request that they publish it. He sent us a copy of the letter and if I may be permitted to read it, you gentlemen of the committee will see what he states.

The CHAIRMAN: You may read it.

Mr. STEELE: It is as follows:

RECEIVED: JAN. 15, 1907.

The S. S. MCCLURE CO.,

409 E. 4th St., New York, N. Y.

GENTLEMEN: I have just finished reading in your January magazine the article entitled "Billions of Treasure" by John E. HAMPTON and George K. FURBER, and noticed therein one serious and erroneous statement which I desire to see corrected concerning the Guggenheim murders. The article is to the effect that "On June 2, 1907, two men were killed and three wounded in their successful fight for the right of way out of the Harbor of Katkana." Now a statement was, I believe, circulated at that time through the press that three men had been killed or wounded at Katkana on said date or any other date as well as a fight for right of way or other matter, on against any rival by the interests represented as the Guggenheims. The fight referred to was against the Alaska Railway and Terminal Company, of which I am chief engineer. I was at Katkana in charge of the company's interests and defended the same at the time stated. As a matter of justice I deem it my duty to make this correction. Further, they state: "A great variety of lead or uranium mineral veins to the coast are sketched in engineers' maps of the district, but they will never go any farther than across the surface of these maps." With possession of the only possible harbor, that at Cordova, etc., which shows the dense ignorance of the authors, and their failure to properly inform themselves, especially as to harbor matters.

Having been a resident of Katkana for several years, knowing the country and a large number of the people interested there, I take exception to the defective terms used in mentioning the class of people endeavoring to obtain title to the coal lands as unwarranted. That the article is strongly sensational, creating a wrong impression in the public mind, and is founded on a mixture of fact, elaborated hearsay, and assumption.

Very respectfully,

WM. H. HAMPTON.

The CHAIRMAN. That letter is admitted. Mr. Brandeis, are you through with this witness?

Mr. BRANDEIS. Subject to the information that he is to furnish the committee; yes, sir.

The CHAIRMAN. The record will show the following request for the production of documents:

On the Secretary of the Interior:

(1) Original or office copy of telegram of Commissioner Dennett to Glavis dated May 28, 1908, appearing on page 229 of Senate Document No. 248.

KNUTE NELSON, *Chairman*.

MARCH 23, 1910.

The CHAIRMAN. The record will show the following return to calls for documents:

WASHINGTON, *March 24, 1910.*

SIR: Complying with the request contained in your letter of the 16th instant, there are transmitted herewith:

(1) Files of the department and the Indian Office relating to the contract between Governor McCurtain, of the Choctaw Nation, and Mr. Ormsby McHarg, as attorney for said nation.

(2) Files of the Indian Office and so much of departmental file No. 5, part 1 (deeds, Quapaw Agency), as relate to the purchase of the allotment of one Charles Bluejacket by Paul A. Ewart.

In connection with paragraph 2, above mentioned, your attention is invited to the fact that since the approval of the deed to Mr. Ewart an investigation of the regularity of this transaction was made by a special representative of the Department of Justice, whose report was referred to this department and by me referred to an inspector for further investigation in the field.

The department has knowledge of other papers with regard to the Bluejacket allotment case, which it can not now furnish, because they are in the possession of the inspector, who, on January 7, was directed to make this investigation as soon as possible. Recent advices indicate that the investigation has been under way for some little time, and a report is expected within the near future, when all papers now in the possession of the inspector will be forwarded to you.

Very respectfully,

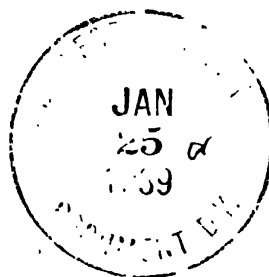
R. A. BALLINGER, *Secretary*.

Hon. KNUTE NELSON,

Chairman Joint Committee of Investigation.

The CHAIRMAN. The committee will now adjourn until to-morrow morning.

(Accordingly, at 5 o'clock and 35 minutes p. m., the committee adjourned until to-morrow, Saturday, March 26, 1910, at 10 o'clock a. m.)



NO. 24

**HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

MARCH 26, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California.

GEORGE SUTHERLAND, Utah.

ELIHU ROOT, New York.

WILLIAM E. PURCELL, North Dakota.

DUNCAN U. FITCHER, Florida

MARLIN E. OLMSTED, Pennsylvania

EDWIN DENBY, Michigan.

E. H. MADISON, Kansas.

OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, Secretary.

SATURDAY, MARCH 26, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., March 26, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10 a. m.

There were present as counsel: Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; Mr. George Wharton Pepper and Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; Mr. John J. Vertrees and Carl Rasch, representing Secretary Ballinger.

(NOTE.—The appearance of Mr. George Wharton Pepper, representing Mr. Gifford Pinchot, was inadvertently omitted from yesterday's record.)

The CHAIRMAN. The committee will please come to order. I desire to announce to counsel that the committee has decided to deny the request of Mr. Brandeis preferred yesterday. We do this because Mr. Ballinger has expressed his intention, and we understand that to be the fact, that he will appear as a witness and testify, and that the counsel on the other side will have the unlimited right of cross-examination as they have had heretofore in the case.

Mr. BRANDEIS. Mr. Chairman, in order that there may be no misunderstanding as to my position, I desire to express an earnest protest against the action of the committee in doing what it seems to me must result in denying to the committee and those who are watching carefully the proceedings the best opportunity of arriving at the facts.

The CHAIRMAN. Your protest will be entered in the minutes. The examination will proceed.

Mr. BRANDEIS. Will you allow me, Mr. Chairman, to make a protest?

The CHAIRMAN. You have entered your protest, and it does not need any extra argument.

Mr. BRANDEIS. I am not undertaking now to make an argument, as I am not permitted to, I understand, under this ruling; but I desire to make an inquiry, if I am to be allowed that privilege, and it is this: I desire to know when Secretary Ballinger will come and testify before his committee, and, specifically, whether he will come at the close of Mr. Steele's testimony?

Mr. VERTREES. I will say, in answer to that, that Secretary Ballinger will not come at the close of Mr. Steele's testimony, and Secretary Ballinger will testify when we see fit to put him on.

Mr. BRANDEIS. Then, Mr. Chairman, I desire to make another protest, and I desire to set forth to the committee, in brief, a reason for that protest, which is specific in view of the statement now made by Secretary Ballinger's counsel. I have refrained from making at any time in the course of this proceeding specific charges against Secretary Ballinger. But specific charges have been made by others, and it must be apparent to the committee and to everyone else who is watching the proceedings of this committee that the great, the one great question which is before the committee and before the country is the question whether Mr. Ballinger is unfit for the position which he now occupies by reason of the lack of truthfulness and directness in his

position. That is the issue which was distinctly brought to the attention of this committee by Mr. Pinchot. It is the issue which every member of this committee must realize as the great issue in this case. He has been charged by Mr. Pinchot with willfully deceiving the President. He has been charged by Mr. Pinchot and the witnesses produced by him, particularly by Mr. Davis, of having made statements which were untrue. Now I wish—

Senator ROOT. Mr. Brandeis, what proposition are you speaking to now?

Mr. BRANDEIS. I am speaking to this single proposition, that this question of the veracity and the frankness of Mr. Ballinger having become a great issue in this case, that question, the order in which he testifies and the circumstances under which he testifies, become a subject of paramount importance. Now, I say this veracity and straightforwardness having become one of the issues of this case, why should this witness, the most material witness in the case, be protected from those ordinary tests of veracity and straightforwardness to which every witness is subjected in the trial of any legal or judicial proceeding or inquiry?

Now, is this witness going to be allowed to withhold his testimony in order that he may frame it so as to reconcile it with that testimony which has previously been put in by one and another of the witnesses, or is this witness going to be treated as another witness, to be called when the exigencies of the inquiry in the interests of truth and truth alone demand that he shall answer the questions which have been put? See that position, Mr. Chairman.

Senator SUTHERLAND. Mr. Brandeis, let me suggest to you that this is an investigation and not an inquisition, and the committee have concluded that what it has determined to do is the right and fair thing to do, and you are discussing a proposition that is not before the committee. It is entirely out of place and is entirely out of order, and I think the chairman should direct that you proceed with the investigation.

Mr. BRANDEIS. Senator Sutherland, it is a question which is before the committee.

Senator ROOT. Well, Mr. Brandeis, I do not think, with due respect to the rulings of the committee, that you should discuss it. The committee has decided. Please do not attempt to prolong it. The committee has unanimously decided and announced its decision. Please proceed with your examination.

Mr. BRANDEIS. I will not argue it any further, Senator, but allow me to make one suggestion, not with reference to the question which you do not desire me to discuss, because I will obey your suggestion—

Mr. JAMES. The question is not before the committee.

Senator ROOT. Any request or proposition you wish to make to committee will hear.

Mr. BRANDEIS. I want to explain why I went into this question.

Mr. GRAHAM. Just one moment, Mr. Brandeis, if you please. Understand that the case is to be argued orally by counsel when the evidence is all in. In argument very much is permitted by way of inference, and the point which Mr. Brandeis is now making would be proper argument going to the weight of the testimony of a particular witness.

The CHAIRMAN. Undoubtedly.

Mr. GRAHAM. And I think it perfectly fair that he should be allowed now to state what he will probably state later on by way of argument and inference, and then give the other side an opportunity, in the face of his position, whether or not they wish to obviate, or take the sting out of that argument, by calling Mr. Ballinger. I think what he is saying is only fair on the part of Mr. Brandeis as notice in advance of what he will argue at the conclusion of the case, if the circumstances are so and so.

Senator FLINT. I will say as far as I am concerned I am not going to stay here one minute if I can help it and listen to arguments of this kind. I am sacrificing other business to be here at this committee meeting and I am here every moment I can possibly spare. I am perfectly willing to remain here after this case is completed and listen to any argument counsel desire to make, but I notify the committee and counsel now that if this case goes on and the time is taken up by argument I will retire from the committee.

Mr. GRAHAM. This is not argument; this is notice of what the argument will be later on.

Senator ROOT. I move that we proceed with the taking of the testimony.

The CHAIRMAN. That motion will be submitted. The Senator moves that we proceed to take testimony.

Mr. BRANDEIS. It is not with a view to argument, Senator, and I am obeying your suggestion on this readily, of course.

Senator ROOT. I withhold my motion.

Mr. BRANDEIS. I deem it necessary to protest, in view of the suggestion made by Mr. Denby on a previous occasion, and I think all of you will remember it. Mr. Denby, when we were discussing the ruling in regard to documents, called my attention to the fact that after the committee had made this rule which excluded clients and assistants from examining documents, and counsel from copying them—he called my attention to the fact that I had not protested against the action of the committee, indicating some fault or omission on my part for not having done so.

Mr. DENBY. Can you give a reference to the hearings on that point?

Mr. BRANDEIS. I will be very glad to do it. It is the day on which the modification was suggested to that ruling, and I will take pleasure in calling your attention to it.

Mr. DENBY. Will you please let us have it?

Senator ROOT. Now, Mr. Chairman, I press my motion to proceed with the taking of testimony.

Mr. MADISON. I think we will take that up by common consent now.

The CHAIRMAN. Mr. Steele, you will please take the stand. I take it, Mr. Brandeis, he is the witness you want.

Mr. BRANDEIS. He is the witness I desire now.

Senator ROOT. He is your second choice?

Mr. BRANDEIS. No; he is my first choice, at present.

The CHAIRMAN. Mr. Steele has already been sworn.

TESTIMONY OF JOHN N. STEELE.

Mr. BRANDEIS. Mr. Steele, what is your full name?

Mr. STEELE. John N. Steele.

Mr. BRANDEIS. Mr. Steele, you are a member of the bar?

Mr. STEELE. I am.

Mr. BRANDEIS. In the city of New York, I presume?

Mr. STEELE. Yes.

Mr. BRANDEIS. And you are counsel of the Morgan-Guggenheim Alaska syndicate?

Mr. STEELE. Yes.

Mr. BRANDEIS. And have been since the organization of the syndicate?

Mr. STEELE. Yes.

Mr. BRANDEIS. You were counsel, were you, for Messrs. Guggenheim and Messrs. J. P. Morgan & Co. prior to the organization of the syndicate?

Mr. STEELE. No. I went to New York from Baltimore in April, 1906, and became general counsel for the American Smelter and Refining Company, M. Guggenheim Sons, Guggenheim Exploration Company, and a great many other corporations allied with them. I found that this Alaska syndicate matter had been under consideration for some time. I had never been counsel for J. P. Morgan & Co., excepting in so far as being general counsel for the Alaska syndicate would make me counsel for them.

Mr. BRANDEIS. You are the brother of Charles Steele, of J. P. Morgan & Co.?

Mr. STEELE. Yes.

Mr. BRANDEIS. You drew the original articles of formation of partnership or association which is involved in the Alaska syndicate?

Mr. STEELE. No.

The CHAIRMAN. Mr. Brandeis, will you allow me a question?

Mr. BRANDEIS. Certainly.

The CHAIRMAN. I did not get it clear yesterday and thought I would postpone it until to-day. What is the Alaska syndicate? Is it a corporation or partnership? I did not get clear on that point. Mr. Brandeis, I will turn the witness over to you. I just want information on that point that I did not get yesterday.

Mr. STEELE. The arrangement is this: It is in the nature of a partnership for a particular venture.

The CHAIRMAN. Well, is it a partnership between corporations or individuals?

Mr. STEELE. Between individuals; between J. P. Morgan & Co. and certain of the Messrs. Guggenheim. It has no corporation; no shares issued.

Senator ROOT. Other participants are mentioned.

Mr. STEELE. No; the other participants are what are called sub-participants; each member of the syndicate, of which there are only two, Messrs. J. P. Morgan & Co. on the one side, and Messrs. Guggenheim on the other, had the right to allow others to come in to their particular shares.

Senator ROOT. Who are the managers of the syndicate?

Mr. STEELE. Mr. Daniel Guggenheim, Mr. S. R. Guggenheim, Mr. Murray Guggenheim on behalf of those gentlemen, and various members of the firm of J. P. Morgan & Co. on behalf of that firm.

Mr. BRANDEIS. Who are those members, do you remember?

Mr. STEELE. Yes; the ones who have taken the active part in it are Mr. J. P. Morgan, jr., Mr. Charles Steele, and Mr. W. P. Hamilton.

The CHAIRMAN. You may proceed, Mr. Brandeis. I simply wanted to ask that preliminary question.

Mr. BRANDEIS. I suppose the rights of those parties are all set forth in some written article, are they not?

Mr. STEELE. Yes, sir.

Mr. BRANDEIS. And the rights of the participants in the syndicate are likewise set forth in written articles?

Mr. STEELE. Yes, sir.

Mr. BRANDEIS. And those same articles will show who the participants or subparticipants in this Alaska Syndicate are?

Mr. STEELE. No, not unless you had all of the subparticipant agreements. Each subparticipant agreement was an agreement by itself; it was in the same form and was a distinct agreement between each subparticipant and the particular member of the syndicate who allowed the subparticipation.

Senator ROOT. Were any receipts given to them?

Mr. STEELE. Yes, sir; or certificate of some kind—a receipt or certificate of some kind.

Mr. BRANDEIS. You spoke of the particular number of the certificate. Am I right in assuming that J. P. Morgan & Co., as a unit, are one member, and the Guggenheims, as a syndicate, are another member?

Mr. STEELE. Quite right.

Mr. BRANDEIS. And that there are only two members?

Mr. STEELE. Two members.

Mr. BRANDEIS. And, consequently, all the subparticipation to which you refer would emanate from either one of those two members?

Mr. STEELE. Quite right.

Mr. BRANDEIS. And where is the record kept of the subparticipants?

Mr. STEELE. Messrs. J. P. Morgan & Co., keep their record in their own office, and Messrs. Guggenheim keep their record in their office.

Mr. BRANDEIS. And are you familiar with the names of the subparticipants?

Mr. STEELE. I do not know at all about J. P. Morgan & Co. I do not know about the Messrs. Guggenheim.

Mr. BRANDEIS. Who are the subparticipants of Messrs. Guggenheim?

Mr. STEELE. There are only, I think, three or four; but unless the committee requires it I would prefer not to mention their names.

Mr. BRANDEIS. I think, Mr. Chairman, it is important for the consideration of this question that the names should be given of all the subparticipants, and so far as Mr. Steele may not have them, they may be procured through him; otherwise by the committee. The clarification of this—

The CHAIRMAN. You may go on and answer the question.

Mr. STEELE. Do I understand that I am required to answer?

The CHAIRMAN. Yes, sir; you can answer the question as far as you know.

Mr. STEELE. Messrs. Kuhn, Loeb & Co., H. O. Havemeyer, jr., and some one whose first name I do not know—Weinberger. I think those are all.

Mr. BRANDEIS. Of the Guggenheims?

Mr. STEELE. Yes, sir.

Mr. BRANDEIS. Are you unfamiliar with any of the Morgan sub-participants?

Mr. STEELE. Absolutely.

Mr. MADISON. Mr. Graves, of the Yukon and White Pass Road, must be a Morgan subparticipant, then.

Mr. STEELE. No; let me explain that. I thought that was made clear yesterday from what Mr. Birch stated. When the Alaska syndicate bought out the interests of Mr. Graves and Mr. Heney in the Copper River Railway the amount of money expended by them on that road and in that work was all examined—the books examined—and it was found to amount to about \$540,000, as I remember. For that they were given the participation of \$500,000, a subparticipation of \$500,000, which came equally from J. P. Morgan & Co. and from the Guggenheims—\$250,000 each—the remaining \$40,000 being paid in cash.

The CHAIRMAN. Let me ask you a question with reference to the White Pass Railroad. That is a Canadian railroad company, is it not?

Mr. STEELE. So I understand, but I have no direct information about that. I have always understood that it was a Canadian or English company.

The CHAIRMAN. Most of that road is in Yukon territory or in the Canadian possessions?

Mr. STEELE. Yes, sir; I think so; all.

The CHAIRMAN. All but 30 miles.

Mr. STEELE. That is about it, 30 miles.

The CHAIRMAN. From Skagway up to the summit of the White Pass.

Mr. STEELE. I do not know the exact direction, but I have always understood that there was just about 30 miles of it in Alaska.

The CHAIRMAN. And from there down to White Horse, at the head of the Yukon River, or Lewis, it is called there, is in the Canadian territory.

Mr. STEELE. I do not know about that. I have never been there, and am not familiar with it, except that I have always understood that there were about 30 miles of that region in Alaska.

The CHAIRMAN. You have always understood that there were 30 miles of the road there owned by an Alaskan corporation of one of the States of this Union, have you not?

Mr. STEELE. No; I have no knowledge about that at all.

The CHAIRMAN. As a matter of fact, do you not know that the name of the Yukon and the White Pass Railroad is simply a trade name, and that the road is owned by two corporations, an American corporation in American territory and a British or Canadian corporation in the Canadian territory?

Mr. STEELE. I do not. I have always heard it spoken of as the White Pass and Yukon Route I think; but I have no information about that route.

Mr. BRANDEIS. You are not able to recall any subparticipants under J. P. Morgan & Co., other than you have stated in answer to Judge Madison's question?

Mr. STEELE. No, sir; I have never been told. I do not know that they have any.

Mr. BRANDEIS. Is not Mr. Peabody a participant?

Mr. STEELE. Charles E. Peabody?

Mr. BRANDEIS. Yes.

Mr. STEELE. I have never heard of it. I am reasonably certain that he is not.

Mr. BRANDEIS. That is, his interest is not in the syndicate but in the Alaska Steamship Company and in the Commercial Company?

Mr. STEELE. I have never heard of his having the slightest interest in the syndicate, nor do I know that he has any real interest in the Commercial Company. His interest was in the Alaska Steamship Company, but about that I may be mistaken. He may have some stock in the Commercial Company, but I do not know.

Mr. BRANDEIS. Mr. Chairman, I desire to request that through Mr. Steele or otherwise, as the committee may see fit, that we have produced before the committee a full and complete list of all the participants and subparticipants in the Alaska syndicate. Mr. Steele, have you copies here of any of the papers?

Mr. STEELE. I have not; no, sir.

Mr. BRANDEIS. And also, Mr. Chairman, that we have copies of the papers constituting the Alaska syndicate, and of the subparticipation.

The CHAIRMAN. That will be taken under consideration. You may proceed with the witness.

Mr. STEELE. I would simply like to submit to the committee that it does seem to me that these are private matters in which the committee in this investigation is in no way interested.

Mr. JAMES. How would it hurt any of them for the committee, or even the country, to know who are really owners of the syndicate?

Mr. STEELE. It would not hurt anybody, but it seems to me that it is a private matter, and that we ought not to be called upon to make it public.

Mr. JAMES. If it would do no injury to anyone, why is there any objection to it?

Mr. STEELE. There are any quantity of private matters which are absolutely honest and square, but which we do not care to be made public.

Mr. JAMES. I understand that, but this is as to the names of the members of the syndicate.

Mr. STEELE. The names of the members of the syndicate have been given.

Mr. JAMES. And the participants?

Mr. STEELE. It is only a private matter with them, and I do not know whether they would wish to give them or not. I have told you those that I know.

Mr. MADISON. Is the Havemeyer that you have mentioned a son of Henry Havemeyer, formerly of the sugar trust?

Mr. STEELE. He is a nephew, I think.

The CHAIRMAN. I suppose that this witness can not be required to tell anything more than he knows, and he can not produce records that are not under his control. He is not an attorney, as I under-

stand it, of the Morgan interests, and of course is not in a position to control the papers of that syndicate. As to anything of that kind we will have to subpoena somebody from the Morgan people.

Senator ROOT. Of course we can do that.

The CHAIRMAN. That you have the liberty to do.

Mr. BRANDEIS. I want to call attention in this connection to the fact that I do not think Mr. Steele has any desire to rest on any technicalities, or, indeed, that there are any technicalities that well could be rested on, because—

The CHAIRMAN. Would it not be well, Mr. Brandeis, to go on with the examination now and try to make a little progress?

Mr. BRANDEIS. Well, Mr. Chairman, if it is a question on which there is any doubt I would like to be heard as to the propriety of securing this testimony.

The CHAIRMAN. You may call for your subpoena and we will receive it and the subpoena will go to the proper witness.

Mr. BRANDEIS. Very well.

The CHAIRMAN. You have had a subpoena issued for this witness, and we put into the subpoena everything that you asked for, and I take it that this witness has brought all that was called for in that subpoena. Now, if you desire any more testimony just submit your subpoena and make the request as you did before, and it will be attended to.

Mr. GRAHAM. I would suggest that Mr. Brandeis might inquire of the witness to ascertain from him whom to subpoena.

Mr. BRANDEIS. Yes. Perhaps I will first call attention, in order that there may be no misunderstanding, to the subpoena duces tecum which was directed to him. It was a very broad one, and it was directed to him to bring papers in the possession of all parties. However, if the committee desires, I will not press it.

Mr. OLMSTED. He could not bring any papers except such as were subject to his call.

Mr. BRANDEIS. It must be remembered, Mr. Olmsted, that this witness and Mr. Birch, came practically as representing these gentlemen. Perhaps I will put a few questions to Mr. Steele. Maybe certain members of the committee are not familiar with the matter. As a matter of fact, you and Mr. Birch have appeared before the Territories Committee and have appeared here because Mr. Eccles has been ill, or at least absent on account of his health in Mexico; is that not a fact?

Mr. STEELE. We appeared before the Committee on Territories of our own motion. We appear here in response to the subpoenas that were issued.

Mr. BRANDEIS. Did you not suggest to the chairman that you desired to appear here?

Mr. STEELE. Mr. Birch did. He suggested that for one particular reason. Shall I state that now?

Mr. BRANDEIS. Certainly; there is no objection to that.

Mr. STEELE. There had appeared in the newspapers, and it was commented on in a good many of the magazines, that the Guggenheims were interested in the coal claims and had paid money for them, and were in a corrupt bargain or agreement with Secretary Ballinger. The item which was mentioned, as I saw it in the newspapers, was

an item of \$1,359.60 paid to Mr. Clarence Cunningham, December 30, 1907.

The CHAIRMAN. That was the item that appeared in the Cunningham journal?

Mr. STEELE. Yes, sir. Now, we wanted to show to this committee exactly what that money was paid for, and we have here the original voucher, and we wish to supplement that by the statement that not a dollar outside of \$1,359.60, shown on this memorandum, was ever paid by the syndicate to Mr. Cunningham or his associates, and if the committee will allow me I will read this little voucher. It is very short.

The CHAIRMAN. You may read it.

Mr. STEELE. It is as follows:

MEMORANDA OF EXPENSE ACCOUNT—EXAMINATION OF COAL LANDS BY A. H. STORRS.

[Submitted by Clarence Cunningham.]

Steamship fare, Katalla and return (C. C.).....	\$90.00
Steamship fare, Katalla and return (Jap.).....	50.00
Hotel (Katalla), \$13.50; telegraph, \$6.20.....	19.70
Launch hire and ferriage.....	34.60
Supplies for Indians on river trip.....	20.25
Groceries and provisions (from Seattle).....	388.78
Freight and lighterage charges.....	80.87
Labor account.....	575.60
Boat hire (Chief John).....	20.00
Expenses J. McGrath and Indian bringing party out to Katalla.....	80.00
	<hr/>
	1,359.60

Approved:

A. H. STORRS.

Voucher should be sent to Clarence Cunningham, Seattle, Wash.

O. K., J. S. P.—Gen'l expense. December 20, 1907.

Approved:

A. CHESTER BEATTY.

Received payment, December 30, 1907.

CLARENCE CUNNINGHAM.

Mr. OLMSTED. Why did the Guggenheims pay that money to Clarence Cunningham?

Mr. STEELE. It shows on its face. The reason was this: Mr. Storrs, as you gentlemen may remember, was sent to Alaska to examine——

The CHAIRMAN. That is the engineer?

Mr. STEELE. The engineer, yes, sir; to examine these coal properties. Before he went a wire was sent to Mr. Clarence Cunningham requesting him to meet Mr. Storrs and to arrange for his outfit. That Mr. Cunningham did, and these items here are for the expenses incurred by Mr. Storrs in making that trip—labor and assistance, groceries and provisions, supplies for Indians on river trips, steamship fare, hotel fare, boat hire, freight, and lighterage charges.

Mr. OLMSTED. Why did not Mr. Storrs pay his own expenses? Why did Mr. Cunningham pay them?

Mr. STEELE. Mr. Cunningham, as I understand it, did not pay them, but Mr. Storrs got these supplies and things from Mr. Cunningham, and then he owed Mr. Cunningham for those and the voucher was sent to New York for payment to Mr. Cunningham, who had given him the supplies.

The CHAIRMAN. That voucher is admitted.

Mr. DENBY. Mr. Chairman, as this is an investigation of the Land Office and the Forestry Service, it seems to me we ought to know before going into an elaborate investigation of general Alaska corporations and their operations, wherein the relevancy of such an investigation would be; that is to say, what it has to do with the General Land Office or the Forestry Service. We might get into an investigation which would consume all summer in going into the relations of the Morgans or other corporations involved in other operations in Alaska without having any bearing upon the direct purpose of the investigation at all. I think the committee is only too glad to conduct any investigation, whether direct or indirect, which has a bearing upon the purposes for which we are convened; but, for myself, I would like to know before we go into these ramifications whether it has a direct bearing on the real purpose of this committee's operations or investigations or not.

Senator ROOT. For myself, Mr. Chairman, I have reached the point where I would be glad to conduct any investigation, so long as we go on and do it.

Senator FLETCHER. It seems to me that this is pertinent to the question—going into this item.

Mr. DENBY. That item; yes. I was referring more especially to the request for other information concerning the operations there.

The CHAIRMAN. This is certainly relevant, in view of the Cunningham journal.

Mr. DENBY. My objection is not in regard to this item, or as to any testimony that the witness has given, but the other matter would practically open this inquiry to a general investigation of those subjects.

Mr. STEELE. I can only say that I have no desire to volunteer any information, except this one thing, which I forgot—

Mr. JAMES. You did volunteer in the committee in the Senate, did you not?

Mr. STEELE. That is quite another situation.

Mr. JAMES. But you did volunteer?

Mr. STEELE. Undoubtedly, and I can tell you, if you wish to know, why.

Mr. GRAHAM. We do not care for that, I think.

Mr. STEELE. There we are directly interested.

The CHAIRMAN. Mr. Brandeis, I wish you would proceed with your examination.

Mr. BRANDEIS. Mr. Steele, what papers other than those introduced through Mr. Birch have you secured for presentation to this committee pursuant to the subpoena which has been issued?

Mr. STEELE. I understand the wire and letter from Mr. Cunningham, that you had yesterday, or introduced yesterday. The only other things I have—and I think they were introduced—the only other matter that I have, which I think was submitted yesterday—I do not know whether it was read—is a letter under date of January 3, 1910, from Judge Lindley to Mr. Eccles, regarding—

The CHAIRMAN. There were two letters of that kind read yesterday.

Mr. BRANDEIS. That letter that Mr. Steele refers to was not read, Mr. Chairman.

Mr. STEELE. It has not been read.

Mr. BRANDEIS. You have that letter, have you?

Mr. STEELE. I have here the opinion of Mr. Stetson and myself regarding the right of the coal claimants to make the proposed option agreement with Mr. Guggenheim and with the Alaska syndicate, and of the right of the Alaska syndicate to enter into it.

Mr. BRANDEIS. Will you allow me to see that paper?

Mr. STEELE. Certainly.

Mr. BRANDEIS. Are there any others?

Mr. STEELE. Except this letter. That is a copy of Judge Lindley's letter.

The CHAIRMAN. There are three opinions, as I understand—Judge Lindley's, Mr. Stetson's, and yours?

Mr. STEELE. Yes, sir. The opinions of Mr. Stetson and myself were not given until the middle or latter part of November.

The CHAIRMAN. Did you not join in the same opinion?

Mr. STEELE. No, sir; we wrote separate letters that crossed. We were conferring about the matter, and he wrote me one and I wrote him one, but we reached the same conclusion separately.

Mr. BRANDEIS. Shall I read these letters, Mr. Chairman?

The CHAIRMAN. May they not go into the record without being read?

Mr. BRANDEIS. I think there may be some occasion to comment on the letters as we go along.

The CHAIRMAN. Very well.

(Mr. Brandeis read the letters referred to, as follows:)

November 15, 1907.

[Agreement between Campbell et al. and Daniel Guggenheim.]

FRANCIS LYNDE STETSON, Esq.,
15 Broad street, New York City.

MY DEAR MR. STETSON: I am sending you herewith a copy of an agreement, under date of the 20th of July, 1907, between A. B. Campbell and others and Mr. Guggenheim, in which the latter is given an option regarding certain coal claims in Alaska.

As you are aware, the patents for these claims have not yet been issued and I would like your opinion as to whether the exercise by Mr. Guggenheim of the option given him would be illegal.

Mr. Guggenheim has until the 9th of December next to exercise his option, so that if you can give me your views within the next ten days, he will still have plenty of time.

I will examine the question myself and will call you up some time next week, with a view to making an appointment to discuss the matter.

Faithfully, yours,

Mr. BRANDEIS. I suppose that was signed by John N. Steele.

Mr. STEELE. John N. Steele; yes, sir.

Mr. BRANDEIS. The reply under date of the 21st of November, 1907, is as follows:

STETSON, JENNINGS & RUSSELL,
ATTORNEYS AND COUNSELORS AT LAW,
Mills Building, 15 Broad Street, New York, November 21, 1907.

JOHN N. STEELE, Esq.,
71 Broadway, New York.

MY DEAR MR. STEELE: In anticipation of the conference proposed in your favor of November 15, I have caused to be made an examination of the decisions upon questions involving the rights of purchasers from entrymen before patent, and I submit my opinion, as follows, as to the law applicable to a transaction such as that proposed to be carried out by Mr. Guggenheim with Mr. Campbell and others, set forth in the memorandum of July 20, 1907:

(1) It seems, from the upholding in recent decisions (*U. S. v. Clark*, 125 Fed., 774 (C. C.); 138 Fed., 294 (C. C. A.); aff. 200 U. S. 601; and *U. S. v. Detroit Lumber Co.*, 131 Fed., 668 (C. C. A.); aff. 200 U. S., 321) of like practice under the timber-land acts, that the holders of United States receiver's final receipts in respect of coal-land locations may sell and dispose of the same before the issuance of patents.

(2) The receiver's final receipt is an acknowledgment by the Government that it has received full payment for the land, and holds the title in trust for the entryman, and will in due course issue to him a patent, and thereupon he becomes the equitable owner of the land.

(3) Prior to the issue of patents for the lands the United States is entitled to cancel fraudulent land entries as against either the entryman or an innocent purchaser for value. Receiver's final receipts are notice to purchasers of the equitable title they evidence—that they are voidable by the Land Department for fraud or error at any time before the patents issue upon them.

While, until the patent which passes the legal title is issued, the legal title remains in the Government, and is subject to investigation and determination by the Land Department, this power will not be exercised arbitrarily or without notice, and, if improperly exercised, the rights of the entryman may be enforced in courts after the patent has been issued to other parties.

(4) Purchasers in good faith, without notice, for value, of the equitable title evidenced by receiver's final receipts upon which patents subsequently issue have a complete defense of a bona fide purchase, unassailable by a suit of the United States to avoid the patents and the titles under them for fraud, perjury, or error in the procurement of the former.

(5) Receiver's final receipts are prima facie evidence that the lands they describe were honestly and regularly entered, and that the entrymen who obtained them are entitled to the patents for the lands. There is no duty on the part of the purchaser to investigate further in the absence of other facts and circumstances suggesting investigation.

The rule of law concerning good faith is the same in respect of such a purchase as that which obtains in other commercial transactions, and no one is bound to assume that the party with whom he deals is a wrongdoer.

In order to overthrow a patent on charges of fraud on the part of the entryman and knowledge thereof on the part of a purchaser, the proof must be clear; and fraud or knowledge of fraud in the entry will not be inferred from a merely suspicious circumstance. The purchaser is not bound to hunt for grounds of doubt.

These several propositions are based upon the decisions in *U. S. v. Clark* and *U. S. v. Detroit Lumber Co.*, above cited.

I am not advised whether or not there is any limitation as to the amount of land which can be held by a corporation in Alaska, though the provisions of the act would seem to imply that any corporation may own real estate to the extent necessary or convenient for its purposes.

I am,

Faithfully, yours,

FRANCIS LYNDY STETSON.

Mr. BRANDEIS. And the next is Mr. Steele's letter.

Senator SUTHERLAND. I would suggest to you, Mr. Brandeis, if the remainder of that file is of the same nature as what you have already read, there is no occasion for taking up the time of the committee with it, but let it go into the record.

Mr. BRANDEIS. Will you let me read it and ascertain what it is? I have not had an opportunity to read these documents before. It will be absolutely necessary for me to inform myself before I could properly answer that question.

Senator SUTHERLAND. We have taken up ten minutes or more reading a statement of the law, and I think it would be better to allow the file to go into the record.

Mr. BRANDEIS. Well, if this witness will remain so I may afterwards ask him the questions, I am perfectly willing to put it into the record.

Senator SUTHERLAND. Suppose you do that, and do it during the noon hour.

Mr. BRANDEIS. Very well, I will do that. I will then introduce this letter of November—

The CHAIRMAN. You had better introduce all of the opinions; there are three of them, as I understand it.

Mr. BRANDEIS. Yes, sir. I want to read them so that there will be no mistake in the record. Here is the first letter of November 15, 1907; the second letter of November 21, 1907, from Stetson to Steele; the third from Steele to Mr. Stetson of November 22, 1907; and the fourth letter of November 25, 1907, from Mr. Stetson to Mr. Steele.

The CHAIRMAN. I thought there was a letter from Judge Lindley there, too?

Mr. BRANDEIS. I have not gotten to that yet, Mr. Chairman.

The CHAIRMAN. Those letters are admitted in evidence.

(The letters are as follows:)

(The letters of November 15 and November 21 have already appeared in to-day's record.)

NOVEMBER 22, 1907.

AGREEMENT WITH A. B. CAMPBELL AND OTHERS.

FRANCIS LYNDE STETSON, Esq.,
Mills Building, City.

MY DEAR MR. STETSON: I beg to submit for your consideration my views regarding the option given under the agreement of July 20th, 1907, from A. B. Campbell and others.

The agreement recites that the vendors, thirty-three in number, have acquired from the United States under the federal coal-land laws, thirty-three tracts of coal land, of one hundred and sixty (160) acres each, and have also acquired certain inchoate water rights intended to be used in the exploitation of the said properties, and that the title to the lands rests in final United States receivers' certificates of entry, issued one to each of said thirty-three persons; that, in order to consolidate the several interests, for the purpose of dealing with the property as an entirety, it has been determined that each entryman shall convey his title to the individual tract to the Union Trust Company of Spokane, in trust, for the purpose of dealing with the title to the consolidated properties as may be determined by a majority of the committee acting for the entrymen; that some conveyances from the entrymen to the trust company have already been made, and that it was contemplated that within a short time conveyances of all the interests will be made.

The agreement then recites that, at a meeting of twenty-five of the entrymen, a resolution was unanimously passed, the material provisions of which are as follows:

(1) To form a corporation under the laws of such State as may be selected, with a capital stock of five million dollars (\$5,000,000) divided into fifty thousand (50,000) shares of the par value of one hundred dollars (\$100) each, which stock shall be non-assessable and without any individual liability upon the stockholders.

(2) The title to all said properties, including the inchoate water rights, to be transferred to the said corporation in consideration of the issue by it to the vendors of twenty-five thousand (25,000) shares of its capital stock, the remaining twenty-five thousand (25,000) shares to be deposited in escrow with the Bank of California, subject to the order of Mr. Guggenheim or his nominee, upon the payment to said depository, to the credit of the corporation, of the sum of two hundred and fifty thousand dollars (\$250,000).

It is not necessary in this connection to refer to the remaining provisions of the memorandum of agreement.

These questions are presented:

1st. Can the entrymen legally assign their claims before the issue of patents from the United States?

2nd. Is there anything illegal in the entrymen conveying their titles to the Union Trust Company before their patents are issued, for the purpose of having the properties treated as one tract and dealt with by a majority of the committee?

3rd. Will the proposed corporation to which the tracts are to be conveyed have any better title than the entrymen?

4th. Can Mr. Guggenheim or his nominee be considered an innocent purchaser in good faith and for value?

5th. Will the exercise by Mr. Guggenheim of the option given under the memorandum of agreement be illegal?

1st. The rule laid down by the Supreme Court in the case of *Myers v. Croft* (13 U. S., 291), to the effect that the preemption law of 1841, regarding assignments of the right prior to the issue of patent did not prevent alienation by a preemptor who had gone "with clean hands to the land office and proved up his right and paid the Government for his land," does not seem to have been questioned by the counsel for the Government in the case of the *United States v. Detroit Timber & Lumber Company* (200 U. S., 321), so far as can be gathered from the report of that case.

The only reference to the case of *Myers v. Croft* that I can find in the *Detroit Company's* case is on page 326 in the argument for the lumber company, where it was referred to only for the purpose of construing the word "speculation." It would therefore seem that so far as the Department of Justice of the United States and the Supreme Court are concerned, the doctrine of *Myers v. Croft* is considered as settled law, and therefore that there is nothing illegal in making a contract for the purchase of the right of the entryman before the patent shall have been actually issued.

2nd. If I am right in the first proposition—that the entrymen had the right to assign their titles before patent—it necessarily follows that an assignment of their claims by the thirty-three entrymen to the Union Trust Company, for the purpose of having the tracts dealt with as an entirety, thus vesting in the trust company a greater acreage than could legally be entered by one person or association of persons, is valid.

3rd. It seems to me that this is a matter of grave doubt. While it may be and doubtless is true that many of the entrymen have no knowledge of the circumstances attending the entries made by those who are now associated with them and that, therefore, they might be considered as innocent purchasers for value and without notice, it is also true that the real effect of the transaction is to vest in each of the entrymen an undivided interest in the claims of the others, and since they constitute the corporation, I am not clear that the court will not hold that the corporation is affected with notice of any defect in any particular claim.

On the other hand, it may be argued that while the character of the transaction is in form an exchange of undivided interests, such exchange is, both as a matter of fact and of law, a purchase, and that, after the patents have been issued, the corporation to whom the claims are being conveyed acquires a valid title by the issue of the patents, even though one or more of the persons guilty of fraud or wrongdoing, and still retaining an interest in the particular claim, may be thus protected from his own wrong.

This result does not seem to me consistent with the principles of equity and justice, and I am not inclined to think that the courts would so decide.

4th. Under the proposed arrangement Mr. Guggenheim or his nominee would not be a purchaser of lands from the company, but would simply become a stockholder therein, and therefore, so far as the title of the corporation to its lands is concerned, would stand in no better position than the corporation itself.

5th. I think this question should be answered in the negative, but, in any event, it seems to me that if the option should be exercised subject to the condition of the lawful organization of the corporation and the acquisition by it of valid titles to the various claims, the question of its legality would be avoided.

Sections 2347 to 2352, inclusive, of the Revised Statutes, relating to coal lands, were extended to the District of Alaska by an act approved June 6th, 1900. I do not find in the Code of Alaska, published in 1900, any limitation upon the amount of lands that may be held by a corporation. I am having the Revised Statutes examined to see if any statute has been passed since 1900 limiting the amount of coal lands that may be held by a corporation, and I suggest that you have a similar examination made in your office, so as to avoid any chance of error.

Faithfully, yours,

JOHN N. STEELE.

P. S.—I do not like the proposed method of issuing the 25,000 shares to be acquired by Mr. Guggenheim, because on its face it seems a bald issue of stock of the par value of \$2,500,000 for the payment of \$250,000, but I take it this can easily be arranged by having all the stock issued to the entrymen in consideration of the land conveyed by them and the payment of \$250,000 into the treasury of the company. The 25,000 shares to be acquired by Mr. Guggenheim could then be sold by the entrymen to Mr. Guggenheim for \$250,000.

I shall be glad to call on you at any time that may suit your convenience to discuss the form in which the exercise of the option by Mr. Guggenheim shall be put, assuming that you agree with me that such exercise will not be in violation of law.

JOHN N. STEELE.

STETSON, JENNINGS & RUSSELL,
ATTORNEYS AND COUNSELLORS AT LAW,
MILLS BUILDING, 15 BROAD STREET,
New York, November 25, 1907.

Alaska.—Coal options.]

JOHN N. STEELE, Esq.,
71 Broadway, New York.

MY DEAR MR. STEELE: I beg to acknowledge the receipt of your favor of November 22, which has been brought by your messenger only this afternoon.

I have carefully considered the five questions indicated by you, and I am happy to say that I agree with you in your conclusions as to all of them.

I also note your postscript with interest, for exactly similar criticism upon the issue of stock, and a corresponding suggestion as to the mode of obviating the difficulty, was included in the draft of my letter of the 22nd, but was stricken out by me as not being directly responsive to your previous communication.

I shall be happy to see you, say, at noon to-morrow, to discuss with you and Mr. Gardiner the form in which the exercise of the option by Mr. Guggenheim shall be put.

I am, faithfully, yours,

FRANCIS LYNDE STETSON.

MR. BRANDEIS. After that letter of November 25, did you communicate the contents of this to the members of the Alaska syndicate?

MR. STEELE. Yes, sir. I don't know that I communicated what you call the contents, but the result was communicated to them.

MR. BRANDEIS. You did that?

MR. STEELE. Yes, sir.

MR. BRANDEIS. And was that communication in writing?

MR. STEELE. No.

MR. BRANDEIS. To which member of the syndicate was it communicated?

MR. STEELE. I can not tell you that; I do not remember; but it was communicated by them to J. P. Morgan & Co. and to the Messrs. Guggenheim, but to which member of the firm of J. P. Morgan & Co. or to which one of the Messrs. Guggenheim I could not say. I don't remember.

MR. BRANDEIS. And the communication was made by you personally?

MR. STEELE. It was so far as the Messrs. Guggenheim are concerned. Whether it was made by me personally to Morgan & Co. I do not know. I think it possibly was.

MR. BRANDEIS. If not, it was made through the Guggenheims to Morgan & Co.?

MR. STEELE. No; probably it would be made by Mr. Stetson.

MR. BRANDEIS. By Mr. Stetson?

MR. STEELE. By Mr. Stetson; yes, sir.

MR. BRANDEIS. Was it in pursuance of the advice which you gave to the Messrs. Guggenheim and that Mr. Stetson gave to Morgan & Co. that the telegram of Daniel Guggenheim to Clarence Cunningham of December 7, 1907, was sent?

MR. STEELE. Yes, sir; we advised them that it was quite legal for them to exercise the option of Mr. Cunningham, and in pursuance of that the telegram of December 7 was sent.

MR. BRANDEIS. Well, now it has appeared, Mr. Steele, that there were certain telegrams sent by you about that time, one specifically, that was referred to by Mr. Birch, and which has not been produced; a telegram in regard to the hurrying of the patents. Have you any such telegram?

Mr. STEELE. No; but I looked for that. I have a distinct recollection of having sent, I think, a wire of that sort.

Mr. BRANDEIS. You sent it to whom?

Mr. STEELE. To Clarence Cunningham.

Mr. BRANDEIS. Direct?

Mr. STEELE. Direct. I sent it in Mr. Guggenheim's name, because Mr. Cunningham did not know me at all.

Mr. BRANDEIS. Now, can you fix approximately the date when you sent that telegram to Clarence Cunningham asking him to hurry the issuing of the patents?

Mr. STEELE. I am mistaken about that. What I meant to say was that I sent that telegram around the 8th of August, about the date that Mr. Storrs was going to Alaska to examine these coal properties. I made a hasty examination of the question as to whether or not we would be protected if we bought simply the titles as they then stood. I had come to the conclusion that we would not be, and I sent a wire at that time to Mr. Cunningham—that is my recollection of it unless there is some correspondence which shows something different.

Mr. BRANDEIS. Mr. Birch, as I understand it, in his testimony referred to a different telegram—

Mr. STEELE. I may have sent that also. Have you anything there which will refresh my memory?

Mr. BRANDEIS. Only the statement of Mr. Birch that the telegram which he received requested him to have Clarence Cunningham hurry the patents.

Mr. STEELE. That might be so. I have no distinct recollection. I think it quite possible.

Mr. BRANDEIS. Now, there is a part of the files applicable to this Alaska syndicate matter which have not been searched by you; is that not so?

Mr. STEELE. Yes, sir.

Mr. BRANDEIS. What files are those?

Mr. STEELE. Well, the only ones that I would know of would be the files of J. P. Morgan & Co. and the files of Mr. Eccles.

Mr. BRANDEIS. The files which you have searched were the Alaska syndicate files?

Mr. STEELE. My files; yes, sir.

Mr. BRANDEIS. Have the files of the Messrs. Guggenheim been searched?

Mr. STEELE. They would not have anything. Anything that would come to them would come right in to me.

Mr. BRANDEIS. Now, Mr. Eccles has not yet returned.

Mr. STEELE. No, sir.

Mr. BRANDEIS. And will you undertake to have a search made of Mr. Eccles, or should the committee subpoena Mr. Eccles with the proper duces tecum, so that it might have a search made of his files to produce this telegram?

Mr. STEELE. I will have the search made if it is desired. I think I could get his files.

Mr. BRANDEIS. Now, I would like the direction of the committee in that respect.

Senator FLETCHER. It seems to me that that would be relevant and proper testimony bearing on the transactions with Cunningham.

Mr. BRANDEIS. They are the transactions in regard to this very matter.

Senator ROOT. I think he ought to be directed to do it.

The CHAIRMAN. You are directed, if you will accept this in lieu of a subpoena, you are directed to search the files of Mr. Eccles and bring whatever information the files show bearing on this subject.

Mr. STEELE. I hope you don't mean bring it. May I not send it? It is exceedingly inconvenient to me. I have been hung up for over a month now.

The CHAIRMAN. Well that will be satisfactory.

Mr. BRANDEIS. I think if Mr. Steele will see that the search is made and report to the committee what he finds when that search has been made, we can determine whether it is necessary to call any additional witnesses.

The CHAIRMAN. Will you take that course, then, Mr. Steele?

Mr. STEELE. Yes, sir.

Senator FLETCHER. Did you get any response to the telegram you sent Clarence Cunningham in August, 1908?

Mr. STEELE. No, sir.

Mr. BRANDEIS. It has already appeared from the telegrams and letters which were put in evidence that there were a number of other communications which have not been reported.

The CHAIRMAN. Mr. Steele, let me see if I understand you. That first telegram of August was to the effect that you did not think the arrangement was legal, or that it should be made.

Mr. STEELE. No; my recollection of that is—I would like you to let me see those letters and telegrams to refresh it.

Mr. BRANDEIS. Yes, sir. Mr. Sleman will give the witness a copy.

Mr. STEELE. We will get this thing clear now. Yes; the wire I sent Mr. Cunningham, Mr. Chairman, was in August, 1907.

The CHAIRMAN. Have you got it there?

Mr. STEELE. No, sir. That I was not able to find.

The CHAIRMAN. Will you state the substance of it?

Mr. GRAHAM. Have you got a copy of it there? I think that is what the chairman means.

Mr. STEELE. No, sir. I haven't a copy of it. The substance of it, as I remember it, was requesting him to use all speed in securing his patents. I had then, at that time, made a very hasty examination of the law, and that examination led me to think that it was inadvisable to take the title simply on the final entries.

The CHAIRMAN. On the final receipts?

Mr. STEELE. On the final receipts. We did not wish to take the title until the patents were actually issued, and I am sure that that was the situation, because in this letter of Mr. Cunningham of August 17, 1907, to Mr. Guggenheim, he states:

Referring to your message regarding the patents and your request that we have the same issued at once—

And then he goes on—

their issuance, of course, is a matter entirely at the pleasure of the Government, etc.

Mr. BRANDEIS. In that letter does not it say, replying to your several messages?

Mr. STEELE. Yes, sir. The other wire I sent here was the one that was introduced yesterday notifying him that Mr. Storrs was starting, and when he would reach Seattle, and asking him to provide an outfit—something to that effect.

Mr. VERTREES. Is that the one on page 2142?

Mr. BRANDEIS. Are you sure that Mr. Cunningham when he uses the word "several" does not mean including more than two?

Mr. STEELE. I could not say what Mr. Cunningham meant, but I have no recollection of any other wires having been sent.

Mr. BRANDEIS. I would like to have you, in making your search, bear in mind specifically that there may be more than the two which you have counted on.

Mr. VERTREES. You did not answer my question.

Mr. STEELE. The wire to which I refer is that of August 8, 1907, introduced in evidence yesterday, and is on page 2142 of the testimony.

Mr. BRANDEIS. And it also appears by the correspondence which has been put in yesterday, as well as by this additional letter of January 3, 1907, of Judge Lindley, which I propose to put in shortly, that there are a number of other letters which have not been produced, namely, referred to in the correspondence with Judge Lindley.

Mr. STEELE. There were none in my files; there might have been some in Mr. Eccles's files.

Mr. BRANDEIS. In Mr. Eccles's files?

Mr. STEELE. Yes, sir.

Mr. BRANDEIS. I also ask, in making your search, that you also bring the other letters which may be referred to therein.

The CHAIRMAN. You understand, Mr. Steele, you are to get all these letters that relate to this Cunningham claim and this optional agreement?

Mr. BRANDEIS. I merely want to call attention to the fact that they may not necessarily all be in Mr. Eccles's files. There probably will be copies or originals in Judge Lindley's files, and the search should be extended to Judge Lindley, who took a very prominent part in this.

Mr. STEELE. Judge Lindley, I think, lives in San Francisco.

Mr. BRANDEIS. Yes; but I am sure that Judge Lindley will respond to any suggestions of you or the committee and submit full copies of all the correspondence.

Mr. STEELE. I understand you want full copies of all the correspondence relating to these coal claims of Cunningham's.

Mr. BRANDEIS. Yes; whatever may be the source or whoever may be the present custodian of that correspondence.

The CHAIRMAN. Will you send them here with a letter to the committee stating that you have made the search as requested, and whether these are all the documents?

Mr. BRANDEIS. The only document you have now is a letter of January 3, 1910, of Judge Lindley, which you have already handed me?

Mr. STEELE. Yes, sir.

Mr. BRANDEIS. I will introduce that letter in evidence and will reserve any questions on it, until I have had an opportunity to examine it.

The CHAIRMAN. It is admitted.

(The letter is as follows:)

SAN FRANCISCO, January 3, 1910.

W. ECCLES, Esq.,
165 Broadway, New York City, N. Y.

MY DEAR MR. ECCLES: I have your favor of the 27th ultimo, in re Cunningham coal project, and the prospective article in McClure's.

I have always understood that the first time the Guggenheim interests had anything to do with Cunningham was *after* all of the coal locations had *passed to entry*. When you and I met at Salt Lake, neither of us knew anything about Cunningham's arrangements with his associates except such as arose *after entry* and the appointment of the committee which met us at Salt Lake. *After entry* they had a right under the then state of the law to consolidate, or do anything they pleased, assuming that their entries were regular and free from collusion.

We certainly had a right to assume that the entries with which we were dealing were regular and free from fraud. As stated in my letter written and handed you at Salt Lake July 20, 1907:

"Prior to final entry a coal land claimant is not permitted to make any contract whatever as to its future disposition. After entry he may do so, and if patents subsequently issue his assignee is protected."

You will notice that the memorandum of agreement signed by Campbell, Moore, and Cunningham, on the same date, contains the following recital:

"The title to these lands rests in final U. S. receiver's certificate of entry, issued to each of said thirty-three persons, and the papers in application for patent are now before the commission of the General Land Office for his action thereon."

Upon the face of these papers, and with no knowledge of the existence of any facts which would in any way tend to invalidate these certificates, you and Mr. Guggenheim had a perfect right to deal with the Cunningham entrymen, and they with you, in the contract, as drawn, under this state of facts, was in violation of no law, and was not contrary to either public policy or private morals.

I understand that the Attorney-General admits this. I am further privately informed that at the recent hearing in Seattle and Spokane, in the proceeding initiated by the Department of the Interior to cancel the entries, the Government openly abandoned all charges against the Guggenheims, and declined to consider facts and circumstances arising *after the dates of the entries*.

Is my information correct?

Of course, the trouble arose out of things which all happened *before* the entries, and concerning which, in the nature of things, we did not nor could not know. If Cunningham had, antecedent to the entries, violated the law, and entered into a fraudulent collusion, we were the last persons to whom Cunningham would have disclosed the truth.

If the attempt at consolidation made by the locators *after* the entry, was in pursuance of an unlawful conspiracy and collusive arrangement made before the entry, the memorandum made at Salt Lake might be evidence against the entrymen participating in an attempted consummation of an antecedent collusive conspiracy; but certainly one of the representatives of the Guggenheim interests were in any way or sense involved.

Of course, you will understand that we never contemplated purchasing the title to the properties resting on the receiver's receipts alone. It was clearly understood at the proceedings in the Land Office at Washington, culminating in the issuance of certificates of entry, were to be thoroughly investigated before anything more than the naming of an expert to make a geological examination should be done. With the *prima facie* integrity of the certificates of entry and the apparent sincerity and standing of the men with whom we were dealing, it was thought that the signatures to the memorandum were sufficient to justify this expenditure. The summer was passing, and it was important that an examination of the deposits, their extent, and quality should be made.

On August 23, while you were at Salt Lake, you wired me as follows:

"Your letter of the 17th Alaska coal. Would we be justified in purchasing property on receiver's final receipt regardless dates patents will be issued?"

To this I responded:

"Your wire of 23d. Would not be advisable to accept receiver's receipts Alaska coal without careful investigation of all proceedings leading up to their issuance."

This I confirmed by my letter to you of August 28, wherein I discussed the matter more at length.

On July 16, 1908, I went quite fully into the status of these entries in the light of the new Alaska coal legislation. (Act of March 28, 1908.)

It would seem that some of the things which I suggested in that letter might happen, have happened. Hence the trouble.

I will get hold of the article in McClure's, although these things irritate me so that I avoid reading them as a rule.

I, of course, have noticed the statements made in the press about the Guggenheim connection with the Cunningham coal lands. I felt at times a strong inclination to make a statement of the truth, as against the half truths appearing in the public prints, which are many times more dangerous than downright lies. But I felt that you were in close touch with the sequence of developments, and if you wanted me to move, or in any way assist, you would let me know.

I am at the service of your good self and Mr. Dan Guggenheim if I can be of any material aid.

Sincerely yours,

CURTIS H. LINDLEY.

MR. BRANDEIS. Does your answer in regard to correspondence extend also to the correspondence relating to coal legislation which is one of the matters referred to in the subpoena which has been served?

MR. STEELE. Yes, sir.

MR. BRANDEIS. And I think it would be also desirable to let it appear in the record the extent of the subpoena, and I will introduce the letter for this purpose of the committee to the sergeant-at-arms.

The CHAIRMAN. It is admitted.

(The letter is as follows:)

JOINT COMMITTEE OF CONGRESS
TO INVESTIGATE THE INTERIOR DEPARTMENT,
AND FORESTRY BUREAU,
Washington, March 8, 1910.

Col. D. M. RANDELL,
Sergeant-at-Arms, U. S. Senate.

DEAR SIR: By direction of the Joint Committee of Congress to Investigate the Department of the Interior and the Bureau of Forestry, I request that you issue a subpoena duces tecum, addressed to Stephen Birch and John N. Steele, 165 Broadway, New York City, directing them to appear forthwith before this committee in Washington, D. C., and to bring with them all books, papers, and documents, whether in their individual possession or control or in that of the Alaska syndicate, or any of its members, employees, representatives, or attorneys which relate to any option or agreement or proposed option or agreement between said syndicate and the owners of the Cunningham group of claims or any of them, and particularly the option dated July 20, 1907, and the acceptance thereof under date of December 7, 1907, or which relate to the claims therein referred to, including among other papers all letters and telegrams (or copies if the originals are not available) which have passed between the owners or representatives of the owners of said Cunningham claims or any of them and the Alaska syndicate or members or representatives of said syndicate or its members or any of them, or which have passed between said syndicate, its members, representatives, and attorneys, and any other person in relation to said claims, said agreement or option or legislation relating to Alaska coal lands.

It is quite possible that the attendance of Messrs. Birch and Steele will not be required this week, and I suggest that you add to your telegram the statement that their attendance will be excused this week unless they receive a further wire from you; also that they will be advised when their attendance is desired.

Very respectfully,

(Signed) KNUTE NELSON,
Chairman Joint Committee.

MR. BRANDEIS. Now, Mr. Steele, you testified at some length before the Territories Committee, and the question was asked yesterday by one member of the committee of Mr. Birch whether he wished to make any change in that testimony or whether it might be accepted—the report of that testimony might be accepted here—by the committee as testimony before this committee. Have you any changes to make in your testimony as there reported?

Mr. STEELE. I do not think so. There may have been one or two stenographic errors, but I do not think so; there is not anything material; nothing material.

Mr. BRANDEIS. We may accept, therefore, the statements you made there without taking up the time of the committee in going over all the matter again?

Mr. STEELE. No; there is one matter in which I did not make my position clear. I subsequently did so after I read my testimony, by sending a letter to Senator Beveridge.

Mr. BRANDEIS. That is reported in the report.

Mr. STEELE. Is it? I did not read it over; I think you will find it.

The CHAIRMAN. Go on and state what it was.

Mr. STEELE. I was asked the question regarding our position in the case of the Humboldt Steamship Company, which is before the Interstate Commerce Commission, and on reading over my testimony I did not think I had made myself clear, and I wrote to Senator Beveridge that our position in regard to the matter was this:

The CHAIRMAN. Let me ask, that was the case where you claimed that in Alaska you were immune from the provisions of the interstate-commerce act, was it not?

Mr. STEELE. Not quite that. My position is this: That so far as the interstate-commerce act is concerned with relation to interstate traffic that the interstate-commerce act does undoubtedly apply, but when you come to the question as to whether or not the jurisdiction over rates on traffic originating and ending within Alaska is with the Secretary of the Interior or with the Interstate Commerce Commission, then our position was that under the act of 1898 that that jurisdiction had been vested in the Secretary of the Interior and had not been taken away by the Hepburn Act.

Mr. BRANDEIS. Your statement referring to this correction or explanation is what is referred to in that letter to Senator Beveridge on pages 155 and 156, is it not?

Mr. STEELE. Yes, sir. I was not aware that that had been printed; I had not seen it.

Mr. BRANDEIS. Then the report, with that addition, represents what you would testify to here if questioned in regard to the various matters?

Mr. STEELE. Yes, sir; I think so.

Mr. BRANDEIS. In view of that fact and what was brought out in regard to Mr. Birch yesterday, I suggest, without taking the time of going over this matter with Mr. Steele, that we embody that testimony appearing in the report.

The CHAIRMAN. That would hardly be proper. We can embody that particular letter or explanation, but not the entire document.

Senator SUTHERLAND. Oh, no; he means embody Mr. Steele's testimony.

Mr. BRANDEIS. Yes. His testimony and Mr. Birch's testimony. Of course not the testimony of other persons who appeared before the committee. I do not know that this was formally put in, and I wanted to make sure that it went in formally; that was in pursuance to the suggestion of one of the members of the committee.

Mr. GRAHAM. It would save the stenographer a great deal of trouble and probably help you out if you would indicate what particular page of the Senate Document 5436 you want incorporated in our record.

Mr. BRANDEIS. I will do that at once.

The CHAIRMAN. You may do that afterwards.

Mr. BRANDEIS. It begins at page 73, and to the end of the pamphlet; that includes the letter and the exhibit which Mr. Steele referred to.

The CHAIRMAN. It is admitted in evidence.

FEBRUARY 18, 1910.

COMMITTEE ON THE TERRITORIES,
UNITED STATES SENATE,
Washington, D. C., Friday, February 18, 1910.

The committee met at 10.30 o'clock a. m.

Present: Senators Beveridge (chairman), Dillingham, Dick, Frazier, Owen, and Hughes.

Mr. John N. Steele, of New York City, and Mr. Stephen Birch, of Kennecoot, Alaska, appeared.

The CHAIRMAN. Mr. Steele, I have in my hands your letter of February 10, addressed to the committee, asking for a hearing for yourself and Mr. Birch, as you say, on behalf of the Alaska syndicate, composed of Messrs. J. P. Morgan & Co. and certain of the Messrs. Guggenheim. I have laid this request before the committee and the committee directed that a letter be sent to you saying that they would be pleased to hear you. You may proceed.

Mr. STEELE. Mr. Chairman, we should like very much, if it meets with your views and the views of the members of the committee, that the hearing should be a public one. We have been accused in the press of doing so many things that are wrong that we should like to have this opportunity of setting ourselves right.

The CHAIRMAN. It shall be so ordered.

(The doors were thereupon opened to all persons wishing to enter, and the hearing declared a public one.)

The CHAIRMAN. These gentlemen that are coming in here now are present on another question that is to come up later. I do not know whether they will be interested in the proceedings this morning or not; but since the hearing has been made public, the doors are open.

Mr. STEELE. Mr. Chairman, with your permission, I think the matter can be more quickly and clearly brought out if you will allow me to ask Mr. Birch questions regarding the operations of the Alaska syndicate. I will take up the entire field, and then take up each operation independently.

The CHAIRMAN. Proceed in your own way.

Mr. STEELE. Then, when I get through, of course we shall be very glad to have any members of the committee ask Mr. Birch any questions they like.

STATEMENT OF MR. STEPHEN BIRCH, OF KENNECOTT, ALASKA.

Mr. STEELE. Please state what is your present occupation, Mr. Birch.

Mr. BIRCH. I am managing director of the Morgan-Guggenheim interests in Alaska.

Mr. STEELE. Do you mean by that that you are a director in the various corporations?

Mr. BIRCH. Yes, sir.

Mr. STEELE. You are also the general manager of what are known as the Bonanza mines?

Mr. BIRCH. Yes, sir.

Mr. STEELE. Who compose what is known as the Alaska syndicate?

Mr. BIRCH. The Messrs. Guggenheim and J. P. Morgan & Co.

Mr. STEELE. When you say "the Messrs. Guggenheim," do you mean M. Guggenheim Sons?

Mr. BIRCH. M. Guggenheim Sons.

Mr. STEELE. Who have charge of the affairs of that syndicate in New York?

Mr. BIRCH. Mr. S. W. Eccles, Mr. John N. Steele, and myself.

Mr. STEELE. Where is Mr. Eccles?

Mr. BIRCH. Mr. Eccles is at present in Mexico.

Mr. STEELE. Where he is on account of his health, is he not?

Mr. BIRCH. On account of his health.

Mr. STEELE. As I understand, the matters of the Alaska syndicate come to Mr. Eccles, you, and me; and after we have thrashed them out we submit them to the gentlemen in the syndicate?

Mr. BIRCH. To Mr. Daniel Guggenheim, Mr. Murray Guggenheim, Mr. S. R. Guggenheim, and the members of the firm of J. P. Morgan & Co.

The CHAIRMAN. Just at this point, so as to clear up the matter at the start, let me ask this question: Mr. Birch says the Alaska syndicate is composed of Morgan & Co., and M. Guggenheim Sons?

Mr. STEELE. Yes, sir.

The CHAIRMAN. Who are the members of the firm of M. Guggenheim Sons? How many are there, and who are they?

Mr. STEELE. Please tell us how many persons and who compose that firm.

Mr. BIRCH. Of M. Guggenheim Sons, there is Daniel, Isaac, Murray, S. R., Simon, Benjamin, and William.

Mr. STEELE. Do any of the members of that firm, with the exception of Messrs. Daniel Guggenheim, Murray Guggenheim, and S. R. Guggenheim, have any participation in or direction of the affairs of the Alaska syndicate?

Mr. BIRCH. No, sir.

Mr. STEELE. About when was this Alaska syndicate formed? In the spring of 1906, was it not?

Mr. BIRCH. In the spring of 1906.

Mr. STEELE. In what enterprises in Alaska is that syndicate interested?

Mr. BIRCH. They are interested in the Northwestern Commercial Company, the Alaska Steamship Company, the Northwest Fisheries, the Kennecott Mines Company, the Copper River and Northwestern Railway, and the Katalla Company.

Mr. STEELE. We will take up first the Northwestern Commercial Company. Please state what interest this syndicate has in that company, when it was acquired, and in what way it was acquired—I mean, by purchase, or how?

Mr. BIRCH. It was acquired by the purchase of stock in the open market from John Rosene and the firm of J. P. Morgan & Co.

Senator FRAZIER. What company are you speaking of now?

Mr. BIRCH. The Northwestern Commercial Company. They now hold 13,000 shares, roughly. Do you want the exact number?

Mr. STEELE. You might as well give it, if you have the memorandum. In March, 1906, they held 13,864 shares, did they not?

Mr. BIRCH. That is it.

Mr. STEELE. Out of a total of how much?

Mr. BIRCH. Out of a total of 30,000 shares.

Mr. STEELE. That would mean what percentage of the total?

Mr. BIRCH. About 46.2 per cent.

Mr. STEELE. At the time this stock was purchased, in what business or enterprise was the Northwestern Commercial Company concerned?

Mr. BIRCH. In a general mercantile business; and they held interests in the Northwestern Steamship Company, which was afterwards consolidated—

Mr. STEELE. Do not say that now, please. Just give the names of the concerns in which they were interested.

Mr. BIRCH. The Northwestern Steamship Company and the Northwestern Fisheries Company, and they had some land in Seattle, and did a general mercantile business in the Seward Peninsula.

Mr. STEELE. The company owned all the stock of the Northwestern Fisheries Company, did it not?

Mr. BIRCH. It did.

Mr. STEELE. Please state the number of canneries and the amount of pack of the Northwestern Fisheries Company. You need not read the names.

Mr. BIRCH. The Northwestern Fisheries Company owns and operates 12 canneries, the total pack of which is about 300,000 cases in a year.

Mr. STEELE. What would be the value of that pack, approximately?

Mr. BIRCH. Between \$1,250,000 and \$1,400,000.

Mr. STEELE. According as the price of salmon rises or falls?

Mr. BIRCH. Yes.

Mr. STEELE. What other canneries are there with which the Alaska syndicate has nothing to do, and what is the amount of their pack?

Mr. BIRCH. There are 28 other canneries, the total pack of which is approximately 2,000,000 cases. The entire pack of all the Alaskan canneries amounts to approximately 2,300,000 cases, of which the Northwestern Fisheries Company's pack is 300,000 cases.

Mr. STEELE. Please state the amount of fry released each year by the Northwestern Fisheries Company and by the other canning companies operating in Alaska.

Mr. BIRCH. The total number of fry released in the last four years is 358,000,000. The Northwestern Fisheries Company released in the last two years 17,000,000 fry.

Mr. STEELE. You have spoken of mercantile business. What was that?

Mr. BIRCH. A general store at Nome and Teller, on the Seward Peninsula.

Mr. STEELE. You have told the committee that the Commercial Company owned the entire capital stock of the Northwestern Steamship Company. That company was plying, as I understand, between Seattle and points in Alaska?

Mr. BIRCH. Yes, sir.

Mr. STEELE. What was done with the Northwestern Steamship Company?

Mr. BIRCH. The Northwestern Steamship Company, on January 1, 1908, was consolidated with the Alaska Steamship Company.

Mr. STEELE. Who controlled the Alaska Steamship Company?

Mr. BIRCH. The original Alaska Steamship Company?

Mr. STEELE. The original Alaska Steamship Company.

Mr. BIRCH. Charles E. Peabody and associates.

Mr. STEELE. Had the Northwestern Commercial Company or the Alaska syndicate any interest in that company of Captain Peabody's?

Mr. BIRCH. Not at that time.

Mr. STEELE. How was the consolidation made? I mean by that, what was put into the new company, and what did the other companies receive for what they put in?

Mr. BIRCH. A valuation was placed upon the different vessels owned by the Northwestern Steamship Company and by the Alaska Steamship Company, and the consolidation was formed on the valuation of these ships, with \$500,000 additional working capital added.

Mr. STEELE. The \$500,000 was paid in by whom? I mean, was that paid in by the Northwestern Steamship Company or by Captain Peabody and his associates?

Mr. BIRCH. The Northwestern Commercial Company put \$450,000 into the new consolidated company.

Mr. STEELE. They subscribed for that much stock?

Mr. BIRCH. Yes, sir.

Mr. STEELE. What is the outstanding capital stock of the new Alaska Steamship Company?

Mr. BIRCH. Two million five hundred thousand dollars.

Mr. STEELE. How much of that is held by the Northwestern Commercial Company?

Mr. BIRCH. Eighty-two per cent.

Mr. STEELE. The remaining 18 per cent is held by whom?

Mr. BIRCH. Charles E. Peabody and associates.

Mr. STEELE. Was any cash payment made to Captain Peabody and his associates in addition to the 18 per cent of stock that was issued to them for the vessels which they put into the new company?

Mr. BIRCH. Yes; the \$450,000 was cash paid to Peabody. His valuation of his ships, I think, was \$900,000.

Mr. STEELE. Then I understand that the Northwestern Commercial Company put in the boats of the Northwestern Steamship Company and \$450,000 cash?

Mr. BIRCH. Yes.

Mr. STEELE. And that Captain Peabody put in his boats, and received 18 per cent of the stock and \$450,000 cash for his boats?

Mr. BIRCH. Yes.

Mr. STEELE. How many boats does that line operate, and to what points?

Mr. BIRCH. The present Alaska Steamship Company owns 12 vessels, minus the one that I see in the paper to-day was lost.

Mr. STEELE. That would make 11 this morning?

Mr. BIRCH. Yes.

Mr. STEELE. They operate to what points in Alaska?

Mr. BIRCH. To southeastern Alaska, southwestern Alaska, the Seward Peninsula, and Bering Sea.

Mr. STEELE. And Nome?

Mr. BIRCH. And Nome—that includes Nome and St. Michaels.

Mr. STEELE. What lines of steamships are there operating to Alaska outside of the Alaska Steamship Company; and about how many vessels do those steamship companies operate?

The CHAIRMAN. Just a suggestion at this point: Since you have traced this transportation from Seattle all along the coast, and around through the Aleutian Islands to St. Michaels and to Nome, might it not be well to now follow it in case it involves any of the companies on the Yukon?

Mr. STEELE. This is the only one we have, and that shows exactly what we are doing.

The CHAIRMAN. I see. Your companies, then, have no connection with the water transportation on the Yukon?

Mr. STEELE. No.

The CHAIRMAN. You end, then, at St. Michaels?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. That is the beginning of navigation on the Yukon?

Mr. BIRCH. Yes, sir.

Mr. STEELE. I am now trying to show, Mr. Chairman, and gentlemen of the committee, what you may call the other lines operating in Alaska, and the number of their boats.

The CHAIRMAN. Proceed in your own way. I merely thought that if there was any connection, the whole water transportation might be shown at this point. Proceed in your own way.

Mr. BIRCH. The other steamship lines that are now running and operating to points in Alaska on the coast are the Canadian Pacific Steamship Company, the Alaska Coast Steamship Company, the Pacific Coast Steamship Company, Shubach & Hamilton, the Humboldt Steamship Company, and a number of tramp steamers, both foreign and American hulls.

Mr. STEELE. Aggregating about how many vessels?

Mr. BIRCH. Twenty-eight, I think.

Mr. STEELE. Who manages and controls the Alaska Steamship Company and its operations?

Mr. BIRCH. Charles E. Peabody.

Mr. STEELE. It and the Commercial Company as well are managed by their presidents and directors in the West, are they not?

Mr. BIRCH. Yes, sir.

Mr. STEELE. Please state, Mr. Birch, when and from whom the Alaska syndicate first acquired any interest in copper properties in Alaska.

The CHAIRMAN. Will you permit a question before you get to that, simply in order that a link may not be lost?

Mr. STEELE. Certainly.

The CHAIRMAN. You named the other transportation companies by water a moment ago, outside of the one that you are interested in. Do any of those companies also control the Yukon transportation?

Mr. BIRCH. They work together with them, and some of the lines have steamers operating on the Yukon. We have not. We do not own any vessels on the Yukon.

The CHAIRMAN. I understand; you said a moment ago that you did not. You end at St. Michaels?

Mr. BIRCH. We end at St. Michaels.

The CHAIRMAN. Then you named others that also do this same transportation?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And, as I understand, some of those connect with or control the Yukon transportation?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Very well. I will bring that matter up later.

Mr. STEELE. Has the Alaska syndicate any interest in any of these other lines?

Mr. BIRCH. None whatever.

Mr. STEELE. Now, will you please state when and from whom the Alaska syndicate first acquired any interest in copper properties in Alaska?

Mr. BIRCH. They first became interested in November, 1906, in the Bonanza mines, which were owned by the Alaska Copper and Coal Company.

Mr. STEELE. What interest did the Alaska syndicate acquire at that time?

Mr. BIRCH. They acquired a 40 per cent interest then.

Mr. STEELE. Was that by purchase?

Mr. BIRCH. By absolute purchase.

Mr. STEELE. Since that time have they acquired any other interest in that mine?

Mr. BIRCH. They acquired the remaining 60 per cent in the spring of 1909.

Mr. STEELE. By purchase?

Mr. BIRCH. By purchase.

Mr. STEELE. So that the Alaska Syndicate now owns the entire Bonanza mines—the property known as the Bonanza mines?

Mr. BIRCH. Yes, sir.

Mr. STEELE. Has the Alaska Syndicate any other interest in any copper property in Alaska? If so, state it.

Mr. BIRCH. The only other interest which the Alaska Syndicate has or had was an option on some copper property owned by Henry Bratnover, which option we have given up, because upon examination of the copper properties we find they are of too low a grade to work.

Mr. STEELE. So the Bonanza mines, then, are the only copper properties owned by the Alaska Syndicate?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. You might state there what the extent of that Bonanza mine is, and how much copper land it comprises, to save going back over it again.

Mr. STEELE. Yes, sir. I wish you gentlemen would please stop me when I get through with any particular subject, and then ask your questions, if you wish to do so.

The CHAIRMAN. Speaking merely for myself, I will say that it is usually the custom of our committee to let the witnesses proceed and make their statements, and then ask questions; although I think myself that your suggestion is a very good one. I wish to ask some questions about this Bonanza mine myself later on.

Mr. STEELE. Yes, sir.

Mr. BIRCH. The Bonanza mine is owned by the Kennecott Mine Company, which company is owned by the Alaska Syndicate. In other words, the Bonanza mine itself is one of the locations. There are a number of claims. There are 32 lode claims and 18 placer claims embraced in a total acreage of 3,240 acres. That is the total amount of the entire holdings of mining property of the Alaska Syndicate in Alaska.

Senator DICK. Do you mean of mining property, or copper mining property?

Mr. BIRCH. Mining property—any mining property; that is, copper, coal, gold, or anything—the entire amount.

Mr. STEELE. Did the Alaska Syndicate have any interest of any kind in what you have spoken of as the Bonanza mines prior to its acquisition of the interest by purchase from the owners?

Mr. BIRCH. No, sir.

Mr. STEELE. Has the Alaska Syndicate secured title, by making entries, claims, or locations of any kind, to any property in Alaska?

Mr. BIRCH. No, sir. The only thing that they have acquired from the Government has been franchises to build railroads under the existing laws.

Mr. STEELE. I will come to that later.

Mr. BIRCH. And such small lands as are necessary in connection with the railroads—the terminal lands.

Mr. STEELE. I may say, for the information of the committee, that the titles to the Bonanza mines were settled in the case of the Copper River Mining Company v. McClellan, et al., which was decided in the lower court on November 3, 1903, by Judge Wickersham, then in Alaska; and his decision was affirmed by the circuit court of appeals of the ninth circuit on May 15, 1905. The case is reported in 138 Federal Reporter, 333. A writ of certiorari was asked from the Supreme Court, but that was denied on January 2, 1906; and that is reported in 200 United States, page 616.

The CHAIRMAN. Is the Judge Wickersham who was then on the bench the present Delegate from Alaska?

Mr. BIRCH. Yes.

Mr. STEELE. What interest, if any, has the Alaska syndicate, or has it ever had, in any coal properties in Alaska?

Mr. BIRCH. The only interest which the Alaska syndicate have or had in coal lands in Alaska was through the Cunningham coal agreement, a copy of which I have here and would like to submit.

Mr. STEELE. Shall that be filed, Mr. Chairman?

The CHAIRMAN. Certainly. File any papers that you wish. Will you be kind enough at this point to read that agreement, if it is not too long? Is it long?

Mr. BIRCH. May I ask Mr. Steele to read it?

Mr. STEELE. It is fairly long; but I can state its substance.

The CHAIRMAN. Please state the substance of it, then, so that we can keep the chain of facts in our minds; and then file the whole agreement as part of the hearings.

Mr. STEELE. Yes, sir. I have a marked copy here, I think. This memorandum is dated July 20, 1907. It is a memorandum of an option given by A. B. Campbell, Clarence Cunningham, and M. C. Moore, "acting for themselves and certain parties associated with them, as hereinafter explained, and hereinafter called the vendors."

It goes on in this way: That these persons "make the following representation and proposal to Daniel Guggenheim, of the city of New York, hereinafter called the vendee."

I should like to read a few lines of this.

The CHAIRMAN. Proceed.

Mr. STEELE (reads):

The said Cunningham, Campbell, and Moore, with 30 other parties, have acquired by purchase from the Government of the United States under the federal coal-land laws 33 tracts of coal land of 160 acres each, aggregating 5,280 acres, situated in the Kayak recording district of Alaska, near the Bering River, about 25 miles from Katalla, and also have acquired certain inchoate water rights on Lake Kustakaw, intended to be used in the exploitation of said properties.

The title to these lands rests in final United States receiver's certificate of entry, issued one to each of said 33 persons, and the papers in application for patent are now before the Commissioner of the General Land Office for his action thereon.

It then proceed to say that in order to consolidate their interests, it is arranged that they shall convey their individual tracts to the Union Trust Company, of Spokane, which company shall hold them in escrow; that as soon as patent shall be issued by the United States for these various claims, a corporation is to be formed to which all the claims are to be conveyed by the Union Trust Company, which at that time it was supposed would have the title to these various properties. That corporation was to be formed of the capital stock of \$5,000,000, divided into 50,000 shares of the par value of \$100 each. Half of that stock was to be issued to Mr. Cunningham and his associates as consideration for their claims; the other half was to be issued to Mr. Guggenheim upon the payment of \$250,000. He had the right to take down that stock by making payments from time to time. In other words, he was not required to pay the whole \$250,000 at once.

The CHAIRMAN. The amount of stock he was to get for \$250,000 was \$2,500,000?

Mr. STEELE. Two million five hundred thousand dollars.

Mr. BIRCH. That money was to be used as working capital?

Mr. STEELE. Yes; we will come to that. This money was to be used for working capital for the company. There was also an agreement on the part of Mr. Guggenheim that if the company should need more money for working capital he would advance \$100,000.

The CHAIRMAN. That made \$350,000?

Mr. STEELE. Yes. The \$100,000 would be a loan. That was not a payment; that was to be a loan to the company.

The CHAIRMAN. That was a loan to the corporation?

Mr. STEELE. A loan to the corporation; yes, sir. There was a further agreement that the corporation would sell the coal to the railroad in which the Alaska syndicate was interested, and which we will hereafter tell the committee about, at the price of \$1.75 a ton at the mines. It was also to make a contract with the Alaska syndicate—or rather with Mr. Guggenheim, who, if the option should be exercised, would have exercised it for the benefit of the Alaska syndicate—to sell the coal at the mine for a period of twenty-five years at a price of \$2.50 a ton.

Mr. BIRCH. Two dollars and a quarter a ton.

Mr. STEELE. I thought it was \$2.50 a ton—\$2.25 a ton then. If the option should be exercised, Mr. Guggenheim, or the Alaska syndicate, then undertook to use their best efforts to make a market for the coal on the Pacific coast.

The CHAIRMAN. I did not get very distinctly what was the difference between the amount of \$1.75 they would sell it to the railroad for at the mine and the \$2.25.

Mr. STEELE. They agreed to sell the coal at the mine to the railroad for \$1.75 a ton.

Mr. BIRCH. For its own use.

Mr. STEELE. For its own use.

The CHAIRMAN. What was the \$2.25?

Mr. STEELE. The \$2.25 was the price at which they would sell to Mr. Guggenheim, if he should exercise his option, or to the Alaska syndicate for which he was acting.

The CHAIRMAN. I am asking these questions to clear the matter up in my own mind. I did not quite catch it. So that the coal mined was to be sold first to the railroad company at \$1.75 at the mine?

Mr. STEELE. For its use, so much as it wanted.

The CHAIRMAN. For its use, for its operations?

Mr. STEELE. For its operations; yes.

The CHAIRMAN. And then the other coal was to be sold to Mr. Guggenheim for \$2.25 a ton?

Mr. STEELE. For \$2.25 a ton.

The CHAIRMAN. To dispose of as he liked?

Mr. STEELE. Well, he agreed to make a market for the coal on the Pacific coast and wherever else he could.

There was another provision, that since this option was given by a committee of three, if enough of the others of the 33 entrymen did not convey their tracts of land to the Union Trust Company, or did not convey them to the corporation which should be formed, then Mr. Guggenheim should have the right to withdraw from the option. In other words, if enough did not put in their properties to make the property such that it could be worked, in his judgment, commercially successfully, then he had a right to abandon it.

The CHAIRMAN. In other words, these men agreed to get all of the 33 claimants to convey their claims?

Mr. STEELE. I will read that part of the agreement, so as to give the committee exactly what it says. This is on page 1 of it:

In order to consolidate the several interests for the purpose of dealing with said properties as an entirety it has been determined that each of said entrymen shall convey his title to his individual tract to the Union Trust Company of Spokane, Wash., in trust, for the purpose of transmitting or dealing with the title to the consolidated tract in such manner as shall be directed by C. J. Smith, R. K. Neill, H. W. Collins, Frederick Burbridge, Fred H. Mason, A. B. Campbell, and Clarence Cunningham, or a majority of those acting as a committee of said entrymen appointed for that purpose.

Conveyances by some of said entrymen to said trust company have been executed and delivered, and it is contemplated that all will execute similar conveyances within a short time.

A meeting of said entrymen was recently held at the city of Spokane, in which 25 out of the 33 participated. At said meeting a resolution was unanimously passed authorizing said committee, or a majority of them, to enter into negotiations with parties with a view to the equipment, development, and operation of the consolidated property and the sale of its product.

Acting for themselves, and as such committee representing their associates under said resolution, they submit to Mr. Guggenheim for his consideration the following proposal:

Then they go on with the matters of which I have spoken to the committee—the terms of the proposal.

(By direction, the whole of the above-mentioned paper is inserted in the record at this point, the same being as follows):

MEMORANDUM.

A. B. Campbell, Clarence Cunningham, and M. C. Moore, acting for themselves and certain parties associated with them, as hereinafter explained and hereinafter called the vendors, make the following representation and proposal to Daniel Guggenheim, of the city of New York, hereinafter called the vendee.

The said Cunningham, Campbell, and Moore, with 30 other parties, have acquired by purchase from the Government of the United States, under the federal coal-land laws, 33 tracts of coal land of 160 acres each, aggregating 5,280 acres, situated in the Kayak recording district of Alaska near the Bering River, about 25 miles from Katalla, and also have acquired certain inchoate water rights on Lake Kustakaw intended to be used in the exploitation of said properties.

The title to these lands rests in final United States receiver's certificate of entry, issued one to each of said 33 persons, and the papers in application for patent are now before the Commissioner of the General Land Office for his action thereon.

In order to consolidate the several interests for the purpose of dealing with said properties as an entirety, it has been determined that each of said entrymen shall convey his title to his individual tract to the Union Trust Company of Spokane, Wash., in trust, for the purpose of transmitting or dealing with the title to the consolidated tract in such manner as shall be directed by C. J. Smith, R. K. Neill, H. W. Collins, Frederick Burbridge, Fred H. Mason, A. B. Campbell, and Clarence Cunningham, or a majority of those acting as a committee of said entrymen appointed for that purpose.

Conveyances by some of said entrymen to said trust company have been executed and delivered, and it is contemplated that all will execute similar conveyances within a short time.

A meeting of said entrymen was recently held at the city of Spokane, in which 25 out of the 33 participated. At said meeting a resolution was unanimously passed authorizing said committee or a majority of them to enter into negotiations with parties with a view to the equipment, development, and operation of the consolidated property and the sale of its product.

Acting for themselves and as such committee representing their associates under said resolution, they submit to Mr. Guggenheim for his consideration the following proposal:

1. A corporation shall be formed under the laws of some State of the Union, under which laws meetings of directors may be held without the States of incorporation, the capital stock to be unassessable and no individual stockholders' liability.

2. The capital shall be \$5,000,000, divided into 50,000 shares of the par value of \$100 each.

3. There shall be seven directors, three to be named by the vendors, three by the vendee. The seventh director shall be designated by the six named by the parties.

4. The title of all of said properties, including said inchoate water rights, shall be transferred to said corporation, in consideration for which there shall be issued to said vendors 25,000 shares of said capital stock.

5. The other half of said capital stock, viz, 25,000 shares, shall be deposited in escrow with the Bank of California, Seattle, with instructions to make delivery of same to Mr. Guggenheim or his nominee upon his payment to said depository, to the credit of said corporation, of the sum of \$250,000, or at the rate of \$10 per share. Said \$250,000 shall be paid in such sums and at such times as may be called for by the board of directors. Said money to be considered as "working capital" to be expended by said corporation in the equipment, development, and operation of said properties. As payments are made by Mr. Guggenheim to said bank the bank shall be authorized to deliver to him one share of stock for each \$10 so paid by him. Mr. Guggenheim shall have the privilege of paying said entire amount of working capital at any time and thereupon to receive the entire 25,000 shares of said stock.

6. Should said sum of \$250,000 prove inadequate for the purpose of equipping and developing said property, Mr. Guggenheim shall advance or loan to the corporation an additional sum of money not exceeding in the aggregate \$100,000, the corporation binding itself to repay such advances on or before three years after the date of making the same, at the option of the board of directors of said corporation, with interest at 5 per cent per annum.

7. Said corporation shall enter into an agreement giving to said Guggenheim or his nominee the exclusive right to purchase for the period of twenty-five years the entire "run-of-mine" coal mined from said property, or so much thereof as said Guggenheim or his nominee may require or demand, for the sum of \$2.25 per ton of 2,240 pounds. The coal is to be delivered at the mine either in bunkers to be provided by the corporation for that purpose or upon cars, as said Guggenheim or his nominee may direct. Said Guggenheim or his nominee shall use their best endeavors to make a market for the coal in Alaska, and in the ports and cities of the United States, to the end that as large a quantity of coal as possible may be mined. Said Guggenheim or his nominee shall agree to purchase all coal which they may require for use or sale from said corporation.

8. Payment for all coal so delivered to said Guggenheim or his nominee shall be made monthly, upon the basis of weights determined by the mine superintendent, such payments to be made at such place as may be directed by the corporation.

9. The corporation shall convey to such railroad company as may be designated by said Guggenheim, and which shall construct a railroad from tide water to said mines, sufficient ground from its holding upon which to establish and maintain its tracks, switches, depots, terminals, stations, and other railway facilities.

10. The corporation shall further agree to sell and deliver, during the period of twenty-five years, to such railroad company as may be designated by said Guggenheim and which may construct a railroad from tide water to the mines, all coal which may be acquired by said railroad company for consumption in its locomotives, shops, stations, and other facilities employed in the construction, maintenance, and operation of its railway, for the sum of \$1.75 per ton of 2,240 pounds, deliveries to be made at the mine in bunkers or on the cars of such railway.

11. The said Guggenheim shall have twenty days from the date hereof in which to determine whether or not he will cause an examination of said properties to be made with a view to an acceptance of this proposal if such examination proves satisfactory. He shall notify the vendors of such determination within said time by telegram addressed to Clarence Cunningham at Seattle, Wash. Thereupon if he elects to proceed with such examination he shall be allowed the period of four months thereafter to inspect the properties and investigate the titles thereto. If such inspection and examination prove satisfactory he shall give notice of his final acceptance of this proposal by telegram directed to Clarence Cunningham, Seattle, Wash.

Thereupon the terms of this proposal shall be deemed binding upon all the parties and shall be carried into effect according to its tenor and purport.

12. It is understood, however, that said vendee shall not be required to proceed with said examination unless all of the 33 of the owners of said coal-land entries, or so many thereof as shall be satisfactory to said vendee, shall have conveyed their respective properties to said trust company, and said trust company shall, under the direction of said committee, and as the holder of the title to said properties, have accepted the terms of the proposal and obligated itself to unite with said vendors in carrying the same into effect, in the event the examination of said properties and titles shall prove satisfactory to the vendee, and he shall elect to finally accept the same.

Should the number of entrymen declining to convey their respective tracts to said trust company and participate in this proposal be so great as in the judgment of said vendee will prevent the successful inauguration and conduct of said enterprise, then and in that event this negotiation shall be at an end, and all parties shall be relieved from all obligations arising hereunder.

Witness our hands in duplicate this 20th day of July, 1907.

A. B. CAMPBELL,
M. C. MOORE,
CLARENCE CUNNINGHAM,

For themselves and as a committee representing their associates.

Signed in the presence of—

S. W. ECCLES.
CURTIS H. LINDLEY.

Mr. STEELE. Mr. Birch, do you know where this memorandum of agreement was executed? And let me say, before we leave this subject, that that memorandum is signed: "A. B. Campbell, M. C. Moore, Clarence Cunningham, for themselves and as a committee representing their associates." It is signed in the presence of S. W. Eccles and Curtis H. Lindley.

Do you know, Mr. Birch, where that memorandum of agreement was made?

Mr. BIRCH. At Salt Lake City.

Mr. STEELE. Who is Mr. Eccles?

Mr. BIRCH. Mr. Eccles is the vice-president of the American Smelting and Refining Company. He is also president of the Copper River and Northwestern Railway Company, and vice-president of the Northwestern Commercial Company and subsidiary companies.

Mr. STEELE. He is the Mr. Eccles of whom you spoke at the beginning of your testimony, who, together with you and me, had charge of the operations of the syndicate in New York?

Mr. BIRCH. Yes, sir.

Mr. STEELE. I shall now have to ask the witness, Mr. Chairman, to give what is really hearsay testimony; but I can not give you the direct testimony, because Mr. Eccles (who was present on that occasion) is now in Mexico and will not be back until the middle or latter part of next month. Shall I proceed?

The CHAIRMAN. I see no reason why you should not. What is the sense of the committee?

Senator FRAZIER. Before you leave this subject I should like to know whether that agreement was consummated?

Mr. STEELE. I was going to come to that, right along in the regular order.

Please state, Mr. Birch, whether that option was ever exercised by Mr. Guggenheim.

Mr. BIRCH. It was, in this way: A telegram was sent to Clarence Cunningham on December 7, 1907, a copy of which I delivered in person to Mr. Cunningham, stating this:

I hereby notify you that I finally accept the proposal made to me by A. B. Campbell, Clarence Cunningham, and M. C. Moore, acting for themselves and associates, in the memorandum of agreement of July 20, 1907.

(Signed) DANIEL GUGGENHEIM.

Mr. STEELE. What is the date of that?

Mr. BIRCH. December 7, 1907.

Mr. STEELE. You may as well file that.

(The above-mentioned telegram is as follows:)

NEW YORK CITY, December 7, 1907.

CLARENCE CUNNINGHAM, Esq., *Seattle, Wash.*:

I hereby notify you that I finally accept the proposal made to me by A. B. Campbell, Clarence Cunningham, and M. C. Moore, acting for themselves and associates, in the memorandum of agreement of July 20, 1907.

DANIEL GUGGENHEIM.

(Charge M. G. Sons, Alaska Syndicate.)

Mr. BIRCH. In the agreement we agreed to make an examination of the property.

Mr. STEELE. Before you get to that point, Mr. Birch, I should like to have you state the circumstances under which that agreement was made.

The CHAIRMAN. This telegram is the acceptance of the agreement which you have read and explained and filed?

Mr. STEELE. Of the option which has been read; yes, sir.

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Go ahead.

Mr. STEELE. Please state the circumstances under which that option came to be given, as you heard them from Mr. Eccles.

Mr. BIRCH. And from the conversations I myself have had with the parties?

Mr. STEELE. Anything.

Mr. BIRCH. Shall I relate the history of the coal situation?

Mr. STEELE. No; I do not think that is necessary.

Mr. BIRCH. Or just this agreement?

Mr. STEELE. Just this agreement.

Mr. BIRCH. Clarence Cunningham and his associates were desirous of having transportation to their coal properties, and they had spoken to both myself and Mr. Eccles in regard to the coal, and after they had received their final receipts here they made this arrangement with Mr. Eccles at Salt Lake City.

The CHAIRMAN. After they had received what?

Mr. BIRCH. After they had received their final receipts from the Government.

Mr. STEELE. In other words—

Mr. BIRCH. In other words, after they had paid in their money to the Government.

Mr. STEELE. After their claims had passed to final entry?

Mr. BIRCH. This agreement was made subsequent to their obtaining their final receipts. They could not all come to Salt Lake City, nor could Mr. Eccles very well get to Seattle. So it was agreed that they should have a meeting and appoint a committee that would come to Salt Lake City and meet Mr. Eccles, as the representative of Mr. Guggenheim. I at that time was in Alaska.

Mr. STEELE. Do you know whether there was anything said by those gentlemen to the general effect that they had spent a great deal of money on these claims, and that, since we were going to build a road to the Bering River field, and would like to have coal for tonnage, it was only fair that we should advance part of the money, or should advance the money to furnish the mines with the necessary equipment to enable them to operate and produce?

Mr. BIRCH. Yes, sir. They did not care, themselves, to open up the property, nor to build the railroad; and their proposition to us was to furnish working capital to open up and operate the coal mines. At the same time, we agreed to build the railroad.

Mr. STEELE. No; I think you are mistaken there, Mr. Birch. It was intended to build the railroad there, but there was no agreement of that sort.

Mr. BIRCH. Well, we did not bind ourselves absolutely to build to them, but we were going to furnish them transportation.

Mr. STEELE. Do you know whether this option agreement was submitted to any counsel in New York for their opinion as to the right of the claimants to make it?

Mr. BIRCH. This agreement was submitted to Mr. Francis L. Stetson and yourself for approval and opinion, whether you thought it was perfectly legal to go ahead with it, and both you gentlemen passed on its legality.

The CHAIRMAN. Mr. Stetson is a lawyer there?

Mr. BIRCH. Mr. Francis Lynde Stetson; yes, sir.

Mr. STEELE. It may save time, and will save me from going upon the stand as a witness, if you will allow me to make this statement

right here: You gentlemen will observe that this agreement states that these entrymen have acquired by purchase from the Government of the United States these tracts of land there, and that the title to these lands rests in final United States receiver's certificates of entry, issued one to each of said 33 persons. The situation, therefore, was that the—

Senator FRAZIER. Are we going to have two witnesses on the stand at once?

Mr. STEELE. I beg your pardon; I thought it might save time for me just to refer to these cases at this point.

Senator FRAZIER. I take it you will make a statement yourself after this witness has concluded?

Mr. STEELE. Yes, sir.

Senator FRAZIER. It seems to me that we had better not mix up the two witnesses.

Senator DILLINGHAM. The only question is whether it would not make the story more connected to let him make this statement here.

Mr. STEELE. I only wanted to refer you to the three cases in the Supreme Court upon which we relied.

Mr. BIRCH. It was submitted to Mr. Steele as to the legality of it.

The CHAIRMAN. And Mr. Stetson?

Mr. BIRCH. And Mr. Stetson. Mr. Steele can tell you his reasons for believing it to be legal.

The CHAIRMAN. Have you any objection to that being done?

Senator FRAZIER. No; I have no objection to anything he pleases to do.

Senator DILLINGHAM. I do not care anything about it.

Senator FRAZIER. Nor I.

The CHAIRMAN. If you object—

Senator FRAZIER. No; I do not object. He can give his opinion in the other man's testimony if he wants to, though it is a rather extraordinary procedure. Go ahead.

Mr. STEELE. We relied upon the old case of *Myers v. Croft*, in 13 Wallace.

The CHAIRMAN. Of course, what you relied upon would be important to you; but the point was that you gave an opinion that the thing was legal.

Mr. STEELE. We did give the opinion that the transaction was perfectly legal, since their claims had passed to final entry; that then they had the right, under the decisions of the Supreme Court in *Myers v. Croft*, in *United States v. Detroit Lumber Company* in 200 United States, and in *United States v. Clark* in 200 United States—

Senator FRAZIER. What are the cases you cited there?

Mr. STEELE. The first was *Myers v. Croft*, in 13 Wallace. The others are *United States v. Detroit Lumber Company* (200 U. S., 321) and *United States v. Clark* (200 U. S., 601). They are to the effect that after the claims have passed to final entry the owners of the claims have the right to deal with them, but that a purchaser of such claims takes them subject to the right of the Government to set them aside for fraud or illegality, and that there is no such thing, really, as a bona fide purchase until after the patents have actually been issued. Has any money ever been paid to Mr. Cunningham under this option agreement?

Mr. BIRCH. None whatever. The only money that was paid to Clarence Cunningham was for supplies furnished by him to the expert whom we sent to examine the coal property, amounting to \$1,359.60. I will give you a detailed memorandum of that.

Mr. STEELE. Have you a copy of that?

Mr. BIRCH. This is the original.

Mr. STEELE. I have a copy here, I think.

Mr. BIRCH. Steamship fare, Katalla and return, \$90. That was for Clarence Cunningham. This is for the Japanese cook—\$50. Hotel at Katalla, \$13.50. Telegraph, \$6.20. Launch hire and ferriage, \$34.50. Supplies for Indians on river trip, \$20.25. Groceries and provisions from Seattle, \$388.78. Freight and lighterage charges, \$80.87. Labor account, \$575.50. This labor was used in connection with the examination of the coal. Boat hire to Indian Chief John, \$20. The expenses of J. McGrath and Indian bringing party out to Katalla, \$80. The total is \$1,359.60.

(At this point the copy of the foregoing memorandum of expense was filed for the record, and the same is as follows:)

MEMORANDUM OF EXPENSE ACCOUNT, EXAMINATION OF COAL LANDS BY A. H. STORRS

[Submitted by Clarence Cunningham.]

Steamship fare, Katalla and return (C. C.).....	\$90.00
Steamship fare, Katalla and return (Jap.).....	50 00
Hotel (Katalla) \$13.50, telegraph \$6.20.....	19 70
Launch hire and ferriage.....	34 50
Supplies for Indians on river trip.....	20 25
Groceries and provisions (from Seattle).....	\$388.78
Freight and lighterage charges.....	80 87
Labor account.....	575 50
Boat hire (Chief John).....	20 00
Expenses J. McGrath and Indian, bringing party out to Katalla.....	80 00

1,359.60

Approved.

A. H. STORRS.

Voucher should be sent to Clarence Cunningham, Seattle, Wash.

O. K.

E. S. P.

General expense, December 20, 1907.

Approved.

A. CHESTER BEATTY.

Received payment, December 30, 1907.

CLARENCE CUNNINGHAM.

Mr. STEELE. The sum of \$1,359.60 paid Mr. Cunningham was paid, then, for supplies, cash advanced by him, labor, and wages of the people mentioned, which supplies, labor, etc., were used in connection with the visit of Mr. Storrs to the Bering River coal fields for the purpose of making an examination of them?

Mr. BIRCH. Yes, sir. It was part of his expenses; and the reason why it was paid direct to Clarence Cunningham and not taken up by Mr. Storrs was that Mr. Storrs requested that the money be paid direct to Mr. Cunningham.

Mr. STEELE. Had those expenses anything to do with the acquisition of any interest in or title to the claims?

Mr. BIRCH. None whatever.

Mr. STEELE. Has the Alaska syndicate any interest of any kind in any coal lands in Alaska except the interest it may have under the agreement with Mr. Cunningham and his associates that has been filed with the committee?

Mr. BIRCH. No interest whatever.

Mr. STEELE. Coming now to the railroad: You mentioned the Copper River and Northwestern Railroad. Will you please state to the committee the terminal of that railroad, and how far it is now advanced?

Mr. BIRCH. The ocean terminal is Cordova, and the railroad has now been completed to mile 102.

Mr. STEELE. How far is it expected to complete it by the end of next season?

Mr. BIRCH. The total distance from Cordova to the Bonanza mines, the present objective point, is 199 miles; and it is expected that the line will be completed by November, 1910.

Mr. STEELE. How much money has been spent upon the railroad up to the last report, about the early part of January?

Mr. BIRCH. Approximately \$10,000,000.

Mr. STEELE. How much is it estimated that it will require to complete it as you have testified?

Mr. BIRCH. About \$5,000,000 more to the Bonanza mines, and an additional \$2,000,000 if built over to the coal fields, making a total of \$7,000,000 further to be expended.

Mr. STEELE. Who has furnished that money?

Mr. BIRCH. The firm of J. P. Morgan & Co., and M. Guggenheim Sons.

Mr. STEELE. Has the Alaska syndicate issued any bonds or any stock of the railroads?

Mr. BIRCH. Not for public—

Mr. STEELE. To the public, I mean—to the public?

Mr. BIRCH. Not to the public. They own all the securities themselves.

Mr. STEELE. What I wish you to make plain to the committee, Mr. Birch, is whether or not the Alaska syndicate has ever received one dollar from the public for the purpose of constructing this road, or whether it has furnished all the money itself?

Mr. BIRCH. They have received no money from the public from sale of stock or bonds.

Mr. STEELE. Or in any other way?

Mr. BIRCH. Or in any other way, and have put up the money themselves from private capital.

Mr. STEELE. Last spring the Copper River and Northwestern Railway took over the Copper River Railway, did it not?

Mr. BIRCH. Yes, sir.

Mr. STEELE. Who at that time owned the Copper River Railway?

Mr. BIRCH. At that time—

Mr. STEELE. I mean at that time.

Mr. BIRCH. The Alaska syndicate owned it.

Mr. STEELE. At the time the Copper River and Northwestern Railway was first acquired by the Alaska syndicate, who owned the Copper River Railway?

Mr. BIRCH. M. J. Heney, Mr. Graves, and Close Brothers, of London.

Mr. STEELE. Did the Alaska syndicate acquire the entire interests of those gentlemen in the Copper River Railway?

Mr. BIRCH. Yes, sir; by permitting them to participate in the Alaska syndicate up to the amount that they had expended.

Mr. STEELE. In other words, they gave them a participation in the syndicate up to the cash amount that they had expended in the construction of the Copper River Railway to that time?

Mr. BIRCH. Yes, sir. Mr. Chairman, I have a map showing this railroad, if you desire it.

The CHAIRMAN. I have just had this map produced, so that when you get through with your statement some questions may be asked about the location of all these claims. Perhaps your map may be a better one.

Mr. STEELE. It probably is, I think.

The CHAIRMAN. That was the purpose of getting this map. Proceed.

Mr. STEELE. It was stated at a hearing before this committee some two or three weeks ago by Mr. Wickersham, the Delegate from Alaska, that the Guggenheims had a lobby in Washington. What have you to say as to the correctness of that statement?

Mr. BIRCH. We have no lobby in Alaska nor in Washington, nor have we anyone here lobbying for any bills, nor have we any bills in Congress other than one permitting us to build a bridge across the Copper River.

Mr. STEELE. Do you know Governor Hoggatt?

Mr. BIRCH. Yes, sir.

Mr. STEELE. Do you know Major Richardson?

Mr. BIRCH. Yes, sir.

Mr. STEELE. And the Hon. James Wickersham?

Mr. BIRCH. Yes, sir.

Mr. STEELE. Have you known them a long time?

Mr. BIRCH. For several years.

Mr. STEELE. Has Governor Hoggatt ever lobbied for the Alaska syndicate, or has he ever been requested to do so?

Mr. BIRCH. No, sir.

Mr. STEELE. Has Major Richardson ever lobbied for that syndicate or been requested to do so?

Mr. BIRCH. No, sir.

Mr. STEELE. Has Mr. Wickersham?

Mr. BIRCH. No, sir.

Mr. STEELE. Has the Alaska syndicate ever had any bills before Congress, except some bills authorizing the construction of bridges over the Copper River?

Mr. BIRCH. No, sir.

Mr. STEELE. I think I asked you, Mr. Birch, if the Alaska syndicate had ever obtained anything from the Government by way of concession, claim, or original grant?

Mr. BIRCH. The only grants that they have obtained from the Government were for right of way to construct a railroad as provided for in the general law.

Mr. STEELE. When you say that the only grants they obtained were the right to construct a railroad, you do not mean that there were any specific bills passed authorizing the construction of the road, but

that the road proceeded to file its map and acquire its right of way under the general law applicable to Alaska?

Mr. BIRCH. Yes, sir; that is what I mean.

Mr. STEELE. So that, if I may sum up your evidence, all the interests of the Alaska syndicate have been acquired by purchase from the former owners, with the exception of the rights of way, station, and terminal grounds obtained by the Copper River Railway under the general laws?

Mr. BIRCH. Yes, sir.

Mr. STEELE. I have with me a letter written by Judge Lindley, who prepared the option agreement of July 20, 1907, which, with the committee's permission, I should like to file with the committee. I have both the original and a copy.

The CHAIRMAN. It may be filed.

Mr. STEELE. With the committee's permission, I will file the copy. It simply states the reasons by which he was governed in advising that the execution of that option agreement was legal.

(The opinion above referred to is as follows:)

[Personal.]

LINDLEY & EICKHOFF,
COUNSELORS AT LAW,
San Francisco, January 3, 1910.

S. W. ECCLES, Esq.,
165 Broadway, New York City, N. Y.

MY DEAR MR. ECCLES: I have your favor of the 27th ultimo, in re Cunningham coal project, and the prospective article in McClure's.

I have always understood that the first time the Guggenheim interests had anything to do with Cunningham was after all of the coal locations had passed to entry. When you and I met at Salt Lake neither of us knew anything about Cunningham's arrangements with his associates except such as arose after entry, and the appointment of the committee which met us at Salt Lake. After entry they had a right under the then state of the law, to consolidate, or do anything they pleased, assuming that their entries were regular and free from collusion.

We certainly had a right to assume that the entries with which we were dealing were regular and free from fraud. As stated in my letter written and handed you at Salt Lake July 20, 1907:

"Prior to final entry a coal-land claimant is not permitted to make any contract whatever as to its future disposition. After entry he may do so, and if patents subsequently issue, his assignee is protected."

You will notice that the memorandum of agreement signed by Campbell, Moore, and Cunningham, on the same date, contains the following recital:

"The title to these lands rests in final United States receiver's certificate of entry, issued to each of said thirty-three persons, and the papers in application for patent are now before the Commissioner of the General Land Office for his action thereon."

Upon the face of these papers and with no knowledge of the existence of any facts which would in any way tend to invalidate these certificates, you and Mr. Guggenheim had a perfect right to deal with the Cunningham entrymen, and they with you. The contract, as drawn, under this state of facts, was in violation of no law, and was not contrary to either public policy or private morals.

I understand that the Attorney-General admits this. I am further privately informed that at the recent hearing in Seattle and Spokane, in the proceeding initiated by the Department of the Interior to cancel the entries, the Government openly abandoned all charges against the Guggenheims, and declined to consider facts and circumstances arising after the dates of the entries.

Is my information correct?

Of course, the trouble arose out of things which all happened before the entries, and concerning which, in the nature of things, we did not nor could not know. If Cunningham had, antecedent to the entries, violated the law, and entered into a fraudulent collusion, we were the last persons to whom Cunningham would have disclosed the truth.

If the attempt at consolidation made by the locators after the entry, was in pursuance of an unlawful conspiracy and collusive arrangement made before the entry,

the memorandum made at Salt Lake might be evidence against the entrymen participating as an attempted consummation of an antecedent collusive conspiracy; but certainly none of the representatives of the Guggenheim interests were in any way or sense involved.

Of course you will understand that we never contemplated purchasing the title to these properties resting on the receiver's receipts alone. It was clearly understood that the proceedings in the land office at Washington culminating in the issuance of certificates of entry were to be thoroughly investigated before anything more than the sending of an expert to make a geological examination should be done. With the prima facie integrity of the certificates of entry and the apparent sincerity and standing of the men with whom we were dealing, it was thought that the signatures to the memorandum were sufficient to justify this expenditure. The summer was passing, and it was important that an examination of the deposits, their extent and quality, should be made.

On August 23, while you were at Salt Lake, you wired me as follows:

"Your letter of the 17th Alaska coal. Would we be justified in purchasing property on receiver's final receipt, regardless dates patents will be issued?"

To this I responded:

"Your wire of 23d. Would not be advisable to accept receiver's receipts Alaska coal without careful investigation of all proceedings leading up to their issuance."

This I confirmed by my letter to you of August 28, wherein I discussed the matter more at length.

On July 16, 1908, I went quite fully into the status of these entries in the light of the new Alaska coal legislation (act of March 28, 1908).

It would seem that some of the things which I suggested in that letter might happen have happened. Hence the trouble.

I will get hold of the article in McClure's, although these things irritate me so that I avoid reading them, as a rule.

I, of course, have noticed the statements made in the press about the Guggenheim connection with the Cunningham coal lands. I felt at times a strong inclination to make a statement of the truth, as against the half truths appearing in the public prints, which are many times more dangerous than downright lies. But I felt that you were in close touch with the sequence of developments, and if you wanted me to move, or in any way assist, you would let me know.

I am at the service of your good self and Mr. Dan Guggenheim if I can be of any material aid.

Sincerely, yours,

CURTIS H. LINDLEY.

Mr. STEELE. That is all, is it not? Is there anything I have omitted? I do not think so.

Mr. BIRCH. Unless there is something more in this former hearing. Is this the marked copy? Here is the marked copy.

Mr. STEELE. Oh, yes; I quite forgot that. Has the Alaska syndicate any interest of any kind in the Alaska Central Railway or in the road known as the White Pass route?

Mr. BIRCH. None whatever.

Mr. STEELE. Has it any interest of any kind in any other railroad or projected railroad in Alaska?

Mr. BIRCH. No, sir; none whatever.

Mr. STEELE. I do not suppose you gentlemen want to go into the question of the Yukon operations, of which Judge Wickersham spoke. They are in Canada.

Senator DICK. Regarding what?

Mr. STEELE. Judge Wickersham says, on page 23:

The Guggenheims and Boyles are in possession of the whole of the Klondike gold fields to-day by concessions. They have absolutely the control of that whole country by a grant of concessions by the government of the Yukon territory. We do not want that in Alaska.

Senator DICK. Did he refer to the Yukon fields in Canada?

Mr. STEELE. Yes, sir.

Senator DICK. Then I assume there is nothing we care about as to that, Mr. Chairman.

Senator OWEN. When you speak of the syndicate, is that intended to mean the general interests of the Guggenheims, or just a particular interest?

Mr. STEELE. Oh, it is simply their particular interests under the Alaska syndicate—M. Guggenheim Sons and the firm of J. P. Morgan & Co.

Senator OWEN. This clamor which has been made apparently relates precisely to this syndicate.

Mr. STEELE. I am very glad you asked that question.

Senator OWEN. And the question which I desire to ask is whether or not this syndicate includes all of the Guggenheim interests?

Mr. BIRCH. Yes, sir; all their interests in Alaska and those of J. P. Morgan & Co.

Senator OWEN. J. P. Morgan & Co. and the Guggenheims have no other interests in Alaska than through this syndicate?

Mr. BIRCH. None other that I know of.

Senator OWEN. That you know of?

Mr. STEELE. Well, you know that M. Guggenheim Sons have no other interest in Alaska?

Mr. BIRCH. I know that M. Guggenheim Sons have absolutely no other interest in Alaska than through the Alaska syndicate.

The CHAIRMAN. Is a man by the name of Jarvis connected in any wise, directly or indirectly, with the Alaska syndicate or with the Guggenheims?

Mr. BIRCH. He is the treasurer of the Northwestern Commercial Company and the subsidiary companies.

The CHAIRMAN. Which are owned by the Alaska syndicate now, as you stated heretofore?

Mr. BIRCH. As I stated heretofore.

The CHAIRMAN. Was he so connected when the fisheries tax was repealed by Congress?

Mr. BIRCH. He was at that time an officer of the Northwestern Commercial Company.

The CHAIRMAN. At that time the syndicate had acquired this Northwestern Commercial Company?

Mr. BIRCH. I think not.

The CHAIRMAN. No? Not at that time?

Mr. BIRCH. I should have to refer to the dates.

The CHAIRMAN. I do not know whether any member of the committee remembers when the fisheries tax law was repealed. I think it was about three years ago; was it not?

Mr. BIRCH. The Alaska Syndicate obtained their interest in the Northwestern Commercial Company about March, 1906.

Mr. STEELE. November, was it not?

Mr. BIRCH. March, 1906. At that time the fisheries were owned by the Northwestern Commercial Company.

The CHAIRMAN. It was after that that the fish-tax law was repealed.

Mr. BIRCH. If it was, then he was an officer at the time that the syndicate held that interest; but I would not know without referring to the date that Captain Jarvis appeared before this committee.

The CHAIRMAN. It was not before this committee. It did not get before this committee. The matter of the repeal of that law went to another committee of the Senate. But this committee has been in-

formed by a member of that committee—it is in the hearings here—that Mr. Jarvis was very active in getting that law passed. I do not know why they did not come before this committee; but they went before another committee.

Senator FRAZIER. They did not like this committee.

Mr. STEELE. Have you any information at all regarding that, Mr. Birch?

Mr. BIRCH. I have, right here. I happen to have something about that, I should say. I telegraphed to Jarvis to get the exact statistics in regard to this salmon business; and in his telegram here he happens to say:

I want to impress fact present salmon law excellent; wonderful protection; preserving industry. The exemption if fry liberated was passed at the instigation of the Bureau of Fisheries for the benefit of Alaska Packers' Association—

He had nothing whatever to do with that.

And has been operating hatcheries for a number of years at great expense.

Mr. Chairman, would you like to have a detailed statement here showing the amount of the pack of each cannery, and the total pack? Would that be of any use?

The CHAIRMAN. You can put it in now if you wish. It is my intention to ask you a few questions on that matter when you conclude your statement in response to Mr. Steele's questions.

Mr. STEELE. Have you any knowledge regarding the repeal of the tax of which the chairman was just speaking to you?

Mr. BIRCH. None whatever.

Mr. STEELE. I think you stated in your evidence that there were no other bills before Congress except the bridge bill. Is there not now before Congress a bill for the relief from taxation of the Copper River and Northwestern Railway? Or do you know whether that has yet been introduced?

Mr. BIRCH. It has been talked of. I do not know whether it has been introduced.

Mr. STEELE. You do know, though, that a bill has been prepared for the purpose of relieving the Copper River and Northwestern Railway from taxation for a certain number of years?

Mr. BIRCH. Yes, sir.

Mr. STEELE. But you do not know whether that has actually been introduced?

Mr. BIRCH. No, sir.

The CHAIRMAN. Speaking about the Packers' Association referred to in the telegram of Jarvis to you, it is suggested by Senator Dillingham that you might explain who the Packers' Association is.

Mr. BIRCH. The Packers' Association operates the greatest number of canneries in Alaska. Their total pack amounted to over a million cases.

The CHAIRMAN. Is the Packers' Association a combination of the various packing companies engaged in packing?

Mr. BIRCH. No, sir.

The CHAIRMAN. The Northwestern Commercial Company, then, is not in the packers' association?

Mr. BIRCH. Not at all. That is the name of a company; it is called the Alaska Packers' Association.

The CHAIRMAN. That is the name of that corporation?

Mr. BIRCH. Yes, sir; operating 14 plants.

The CHAIRMAN. And Mr. Jarvis, although an officer in the Northwestern Company (another company), says there that this repeal of the fish law was in the interest of the packers' association.

Mr. BIRCH. It was done at their instance and instigation with regard to the fry. I do not know anything about the repeal of any other act. In fact, I know nothing about that.

The CHAIRMAN. The fry, as I understand—we are having that matter looked up now—were to be released in lieu of the tax which these packing companies, including yours, paid the Government?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. From which the Government derived some much-needed funds?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. In lieu of that, upon this repeal it was provided that the company should release a certain amount of fry?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. We will come to that later. Go ahead.

Mr. STEELE. I think I have finished, Mr. Chairman, if you will indulge me just one moment.

The CHAIRMAN. Do any of the members of the committee desire to ask any questions?

Mr. STEELE. There is only one other thing I wish to ask.

Mr. Wickersham, on page 18 of the proceedings before this committee, uses this language:

I want government aid given to railroads in Alaska in the proper way, but I do not propose to see the coal interests in the Territory of Alaska turned over bodily to the Guggenheims if I can prevent it.

Then on the other page, he speaks of Major Richardson lobbying for a bill; and in another place he speaks about the bill that I understand was then before this committee providing for a legislative council. Will you please state whether the Alaska syndicate or anyone representing it has had anything of any kind, sort, or description to do with that bill?

Mr. BIRCH. Nothing whatever.

Mr. STEELE. Has it taken any steps to help it or to oppose it in any way, shape, or form?

Mr. BIRCH. No, sir.

The CHAIRMAN. Before you pass from that, will you tell me what is the date of the telegram to Mr. Jarvis?

Mr. BIRCH. Day before yesterday—February 16.

The CHAIRMAN. February 16, 1906?

Mr. BIRCH. 1910.

The CHAIRMAN. Oh, you mean right now?

Mr. BIRCH. This is a telegram that I sent to get this information.

Senator HUGHES. Is that the one that relates to the passage of the fry bill?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Will you please tell me, so that I can get that information right here, at what time the Alaska syndicate acquired the Northwestern Commercial Company, of which Mr. Jarvis was an officer?

Mr. BIRCH. In March, 1906.

The CHAIRMAN. The fish law was passed June 26, 1906. So at that time your syndicate did own this company.

Mr. BIRCH. Well, I was not aware of that.

Mr. STEELE. What interest did we own at that time?

Mr. BIRCH. We owned 46 per cent of the Northwestern Commercial Company.

Mr. STEELE. Who was the president of the Northwestern Commercial Company at that time?

Mr. BIRCH. John Rosene.

Mr. STEELE. Had the Alaska syndicate any control over that company at that time?

Mr. BIRCH. No, sir.

Mr. STEELE. Or any charge of its operations?

Mr. BIRCH. Not at that time.

Mr. STEELE. When did Mr. Rosene resign?

Mr. BIRCH. In 1908, according to my recollection.

Mr. STEELE. Was it not December, 1907?

Mr. BIRCH. It may have been December, 1907, or the early part of 1908.

Mr. STEELE. Up to that time he had been in charge of the operations of that company?

Mr. BIRCH. Yes, sir.

Mr. STEELE. That is all.

The CHAIRMAN. Have any members of the committee any questions? I will suggest to the committee that it is now five minutes of 12, and there are a number of gentlemen here who are to be given hearings on other subjects. Might it not be well for the committee to have an executive session to discuss the order of procedure? If there are any questions to be asked, of course, we can not ask them between now and 12 o'clock.

Senator FRAZIER. There will be some. I wish to ask some.

Senator DILLINGHAM. When will you adjourn to?

The CHAIRMAN. I was suggesting that perhaps it might be well for us to have an executive session, and then determine the procedure, and let these gentlemen who are here on other business and want to be heard by the committee wait for us. We will let you all know almost immediately—within five minutes.

Senator FRAZIER. You will notify Mr. Birch before he goes that we shall want him at a subsequent day?

The CHAIRMAN. Oh, yes. Do not go away, Mr. Birch.

Mr. STEELE. I will state that I have here the opinion I wrote and the opinion Mr. Stetson wrote. I do not want to bore the committee with them unless you wish to have them put into the record.

(The committee thereupon went into executive session, at the expiration of which it was announced that hearings on this subject would be resumed to-morrow, Saturday, February 19, 1910, at 10 o'clock a. m.)

FEBRUARY 19, 1910.

COMMITTEE ON TERRITORIES,
UNITED STATES SENATE,
Washington, D. C., Saturday, February 19, 1910.

The committee met at 10 o'clock a. m.

Present: Senators Beveridge (chairman), Dillingham, Kean, Dick, Piles, Frazier, and Hughes.

Mr. JOHN N. STEELE, of New York City, and Mr. STEPHEN BIRCH, of Kennicott, Alaska, appeared.

**STATEMENT OF MR. STEPHEN BIRCH, OF KENNICOTT,
ALASKA—Continued.**

The CHAIRMAN. Had you concluded your examination, Mr. Steele?

Mr. STEELE. I should like permission to ask Mr. Birch only two or three further questions to make his testimony perfectly clear.

The CHAIRMAN. Certainly; go ahead with as many as you wish.

Mr. STEELE. Mr. Birch, although I think I asked you at the hearing yesterday, I should like to ask you again (so that it may be perfectly clear to the committee) to please state whether the Alaska syndicate, or any member thereof, had any interest of any kind, sort, or description in what are known as the coal claims of Mr. Cunningham and his associates prior to the option agreement of July 20, 1907?

Mr. BIRCH. No, sir; they had no interest whatever.

Mr. STEELE. Had they any connection with them?

Mr. BIRCH. They had no connection whatever with them.

Mr. STEELE. The option agreement does not obligate the Alaska syndicate, if the option should be exercised, to build a railroad to the coal mines. Please state whether or not it was contemplated and was the intention of the Alaska syndicate at that time to build that road and whether it was understood that it would do so.

Mr. BIRCH. The Alaska syndicate were going to build the railroad into the coal fields; but as part consideration in this agreement with Cunningham they were to furnish transportation to Cunningham.

Mr. STEELE. You mean by that transportation for the coal to be produced from those mines?

Mr. BIRCH. Yes, sir.

Mr. STEELE. That branch was to be built from the crossing at the junction at the east bank of the Copper River to the Bering River coal fields?

Mr. BIRCH. Yes, sir.

Mr. STEELE. And would have cost about how much?

Mr. BIRCH. Over \$2,000,000.

Mr. STEELE. That road was not actually constructed, was it?

Mr. BIRCH. No, sir; it never has been. For the reasons, I will refer you—

Mr. STEELE. Suppose you let me ask that, because I have the paper right before me. Are the reasons why the construction of that branch of the road was not proceeded with correctly set forth in the report of Mr. S. W. Eccles, the president of the Copper River and Northwestern Railway Company, under date of December 14, 1908, and filed with the Commissioner of the General Land Office, together with

the report of Mr. Hawkins, the chief engineer of the railway, filed on the same date, and printed in the hearings before the House Committee on Territories in the matter of the Alaska Pacific Railway and Terminal Company, House bill 25553, January 12 to 14, 1909? I refer you especially to pages 20 and 21 of Mr. Eccles's report. I do not like to take the time of the committee by having that read, but I will leave it with you.

Mr. BIRCH. This sets forth the condition exactly as it existed, and the reasons why the railroad was not built.

Mr. STEELE. I should like to have that report of Mr. Eccles put in the record, because it shows exactly what the plan of operation was, and why the construction of that particular branch of the road was not proceeded with.

The CHAIRMAN. Put in anything you like.

Mr. STEELE. It is only two pages.

The CHAIRMAN. Put all of it in if you put any of it in.

Mr. STEELE. Yes; I wish to put it all in. The whole of it comprises only two pages.

The CHAIRMAN. Very well.

(The paper above referred to is marked "A" and is as follows:)

COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY,
OFFICE OF THE PRESIDENT.
New York, December 14, 1908.

HON. FRED DENNETT,
Commissioner of the General Land Office.

SIR: I had the honor of writing the honorable Secretary of the Interior on the 30th ultimo, stating in a general way what had been accomplished in the construction of the Copper River Railway and the Copper River and Northwestern Railway in Alaska, such letter having been addressed to the Secretary because I had been informed that your report had previously been submitted to him.

Mr. E. C. Hawkins, the chief engineer of the two railways, has just arrived in New York, and, complying with your request of August 20, 1908, in response to House resolution of May 12, 1908, I submit herewith his report and accompanying exhibits, which will give you full information as to what has been accomplished in the construction of the railways and of the amount of money expended in connection therewith.

For your further information, I beg to submit the following statement regarding the history of these roads and the purposes sought to be accomplished by those who have the entire ownership of them.

We understood Alaska to be a Territory, not only containing vast deposits of copper and other minerals, but that its interior afforded highly favorable conditions for agriculture, and was lacking in almost all transportation facilities.

Early in 1906 the Copper River and Northwestern Railway Company determined to build from Valdez to the Copper River and up the Copper River into the Tanana district.

It was thought that the construction of this road would encourage and develop the vast mineral districts intended to be reached by it, and by providing regular transportation to interior Alaska—now almost inaccessible—would also develop the agricultural resources and tend toward its permanent settlement.

In the fall of 1906 preparations were made for sending in supplies and material for the construction of the road, and N. K. Rodgers was appointed chief engineer. Mr. Rodgers went into Alaska on the opening of navigation the following summer, with instructions to make further surveys for the purpose of determining whether the proposed line from Valdez through the Keystone Canyon was the best and most practicable route.

Mr. Rodgers made a thorough examination of the country and surveyed routes down the Copper River to Katalla. He reported Katalla as a more desirable terminus than Valdez, and that by selecting Katalla as a terminus the road would avoid the high grades through the Keystone Canyon and provide an easy grade down the Copper River to Katalla, and submitted a report of Mr. Clapp, a United States Government engineer, showing that it was practi-

cable by the construction of a breakwater at Katalla to make a safe and commodious harbor.

Our attention having been called to the large deposits of bituminous and anthracite coal in the Bering River fields, Mr. A. H. Storrs, an eminent coal expert, was sent there to make an examination and report for the purpose of seeing whether the coal was of such a character and in such quantities as would justify the construction of a railway to that region, for we knew that there was a great scarcity of coal on the Pacific coast and that it was highly desirable that means of transportation should be afforded by which this coal could be placed on the Pacific coast at a reasonable cost, and so avoid the necessity of purchasing coal from foreign countries and of bringing it at heavy expense from the Atlantic coast and some of the Western States. Mr. Storrs visited the coal fields, made a thorough examination, and reported a practically unlimited quantity of bituminous coal of the highest character, equal, in his opinion, to the coal in the Pocahontas field.

The report of Mr. Clapp upon the construction of a breakwater at Katalla was submitted to Colonel Symonds, United States Government engineer, and to Mr. Bensen, New York dock commissioner, who were considered the two most eminent authorities and engineers upon the construction of breakwaters. They made changes in the plan of breakwater, as suggested by Mr. Clapp, and advised that if the reports made to them as to the prevailing condition and strength of the wind and sea were correct the breakwater was feasible and would provide a safe harbor. This breakwater was estimated to cost something over a million dollars.

It was then determined that the breakwater should be constructed and that the terminus of the main line of the railway should be at Katalla.

The construction of the breakwater was begun and the work proceeded with the intention of making Katalla the terminus of the roads. During the season of 1907, however, it was clearly demonstrated that the force of the wind and the sea at Katalla was such that it was impracticable to build a breakwater at that point.

Mr. Rodgers resigned his position as engineer in December, 1907, and Mr. E. C. Hawkins was appointed chief engineer in his stead.

As soon as possible Mr. Hawkins went into Alaska and made a personal examination of the conditions there. His reports confirmed the information previously received as to the impracticability of constructing a breakwater at Katalla, and it was then determined that the principal terminus should be located at Cordova, which afforded a perfectly secure and landlocked harbor, with a depth of water at all times sufficient to accommodate the largest steamships.

The construction of the Copper River Railway from Cordova, and of the Copper River and Northwestern Railway from Katalla to a junction on the east side of the Copper River, and from Katalla to the Bering River coal fields (the whole of which latter route had been surveyed, several miles constructed, and quite a large part graded), was being proceeded with with all possible dispatch when we were informed that the coal locators in the Bering River fields were having difficulty in securing patents to their locations, and that it was a matter of grave uncertainty when they would secure the same and be in a position to develop their properties and have coal for transportation.

After mature consideration it was determined that it would be unwise to expend the large sum of money necessary for the completion of the railway to the Bering River coal field before we could have some reasonable assurance that the coal locators in that field would secure their patents and be in a position to develop their properties, since the completion of the road would not only have required the expenditure of large sums of money, but the road when completed, if idle, would have rapidly deteriorated, and if the development of the coal properties should be delayed for some years the road in all probability would have to be practically rebuilt.

As the Secretary of the Interior was advised in my communication of the 30th ultimo, we have provided the money for the construction and completion of this road and are ready to complete it just as soon as we can obtain a reasonable assurance that the coal fields will be worked and developed.

As shown by Mr. Hawkins's report, the road from Cordova to the head of the Abercrombie Rapids, a distance of about 54 miles, has been completed, with the exception of the permanent bridges over Copper River.

Of the Copper River and Northwestern Railway, owing to the matters hereinbefore set out, only about 6 miles have been actually constructed, although a

large amount of grading and excavation on the proposed line to the Bering River coal fields has been done. A number of terminal buildings, such as car shops, warehouses, hospital, office buildings, employees' quarters, etc., have been erected.

Changes in our plans were caused, in fact necessitated, by the fuller and more accurate information obtained from time to time. It must be remembered that in building standard-gage roads in Alaska we are practically pioneers, that Alaska is far away, communication with the East slow, construction most expensive and difficult, and sometimes dangerous, and that in Alaska, like in all new countries, experience and thorough knowledge of actual conditions are the only safe guides.

As shown in Mr. Hawkins's report, we have spent in this matter the sum of \$5,707,466.95.

We have not asked any assistance from the Government of the United States, either in money or in grants of land. The money for the whole enterprise has been and is being furnished by those who originally undertook it.

It is our intention, as future conditions shall warrant, to extend our line until we have an American railway of standard gage reaching from the Pacific Ocean to the Yukon River.

Finally, I beg to say that, while it is thought that in the course of time the enterprise will prove profitable, its undertaking was influenced, to no inconsiderable degree, by a feeling of just pride in those who undertook it that they would be remembered as men who had contributed, by their courage and personal means, to the permanent development and settlement of the important Territory of Alaska, whose great resources must necessarily have remained dormant and its lands unoccupied until adequate transportation facilities were supplied.

Respectfully, yours,

S. W. ECCLES, *President.*

Mr. STEELE. Mr. Birch, you mentioned in your testimony the Katalla Construction Company.

Mr. BIRCH. Yes, sir.

Mr. STEELE. You mentioned that as being one of the properties of the Alaska syndicate. Please state what that company is.

Mr. BIRCH. The Katalla company is the company that is constructing the Copper River and Northwestern Railway.

Mr. STEELE. That is all, Mr. Chairman.

The CHAIRMAN. I have just a few questions to ask. In order to clear up the matter in my mind, let me ask this question first. (I suppose it is already in the hearings, but I want to gather it up again.) The Alaska syndicate, you say, consisting of the Messrs. Guggenheim and J. P. Morgan & Co., owns certain properties. The first of these to which you referred, I believe, was a steamship company?

Mr. BIRCH. No, sir; the Northwestern Commercial Company.

The CHAIRMAN. That is the one that operates the steamships?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Very good. It also operates canneries?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. I see it is stated by Delegate Wickersham, in the hearings held before this committee as follows:

The Guggenheims also own all the steamship lines which run up there except one independent, and they are fighting that independent line now by cutting rates and refusing to give them any facilities under the interstate commerce law, etc.

I understood you to say yesterday that there are how many other steamship lines?

Mr. BIRCH. There is the Canadian Pacific Steamship Company, the Alaska Coast Steamship Company, the Pacific Coast Steamship Company, Shubach & Hamilton, the Humboldt Steamship Company.

and a number of tramp steamers, with both foreign and American hulls.

The CHAIRMAN. What interest, if any, has the Alaska syndicate or any person connected with the Alaska syndicate in any of these?

Mr. BIRCH. No interest whatever.

The CHAIRMAN. What is the comparative business done by these companies and the steamship line conducted by the Northwestern Commercial Company?

Mr. BIRCH. Do you mean as to percentage?

The CHAIRMAN. As to tonnage, as to passengers, and as to general business?

Mr. BIRCH. I should say that our company, the Alaska Steamship Company, does not do more than from 15 to 20 per cent of the total tonnage.

The CHAIRMAN. From 15 to 20 per cent of the total?

Mr. BIRCH. Of the total.

The CHAIRMAN. What, if anything, is the fact concerning a rate warfare conducted by the steamship line operated by the Northwestern Commercial Company, which is owned by the Alaska syndicate?

Mr. BIRCH. There was a rate war on, last summer, to Nome. The facts and details of it I am not familiar with, but I know that there is and has been a rate war.

The CHAIRMAN. Was that rate war begun by the Alaska Steamship Company, which, I believe, is the one operated by the syndicate?

Mr. BIRCH. No, sir; it was begun by the other people.

The CHAIRMAN. Who owns the other companies that you name?

Mr. BIRCH. The Canadian Pacific Steamship Company—

Senator PILES. How many vessels do they operate? Give us the number operated by each.

Mr. BIRCH. I can not do that as to all of them. I can give you the number approximately. There are about 28 vessels, all told, that we do not have anything to do with, while we control about 12 vessels.

The CHAIRMAN. Eleven now, since the loss of the one yesterday?

Mr. BIRCH. Eleven now.

The CHAIRMAN. You do not know who the owners of these others are?

Mr. BIRCH. No; not in person. I do not.

The CHAIRMAN. Except that you testified that neither the Alaska syndicate nor any person connected therewith has any interest in any of them?

Mr. BIRCH. No, sir; they have no connection whatever with any of them.

The CHAIRMAN. That is one branch of your companies. Before I pass that, however, the Northwest Commercial Company operates, in addition to the steamship line mentioned by you, a fishing and canning industry?

Mr. BIRCH. Yes, sir; under the name of the Northwestern Fisheries Company.

The CHAIRMAN. The Northwestern Fisheries Company?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. The Northwestern Commercial Company is a sort of holding company for the Northwestern Fisheries Company and for the Alaska Steamship Company?

Mr. BIRCH. Yes, sir; they hold all the stock of those subsidiary companies.

The CHAIRMAN. What other subsidiary companies are there?

Mr. BIRCH. The Northwestern Fisheries Company and the Northwestern Steamship Company, which holds 82 per cent of the stock of the Alaska Steamship Company.

The CHAIRMAN. Which is held by the Northwestern Commercial Company?

Mr. BIRCH. Yes, sir; which in turn is held by the Northwestern Commercial Company.

The CHAIRMAN. That is one subsidiary company?

Mr. BIRCH. That is one; the Northwestern Fisheries Company is another subsidiary company; and the North Coast Lighterage Company is another small company that does lightering. Those are the only subsidiary companies which they have.

The CHAIRMAN. What is the extent of the business of the Northwestern Fisheries Company?

Mr. BIRCH. The business of the Northwestern Fisheries Company amounts to 300,000 cases of salmon per year, and the total pack of Alaska salmon amounts to 2,356,000 cases of salmon.

The CHAIRMAN. Prior to the repeal of what is known as the fish-tax law, 4 cents was paid on each case, was it not.

Mr. BIRCH. I believe so. It is now.

The CHAIRMAN. No; you release fry in lieu of the tax, do you not?

Mr. BIRCH. You have the option, as I understand it.

Senator FRAZIER. An option which you always exercise?

Mr. BIRCH. No; we do not always exercise it.

The CHAIRMAN. As a matter of fact, which do you do? Do you release the fry or do you pay the tax?

Mr. BIRCH. Both.

The CHAIRMAN. You do both?

Mr. BIRCH. Both.

The CHAIRMAN. I was just figuring up here, and I find that if you had not paid the tax since it was repealed it would have been a saving of \$12,000 a year, would it not—300,000 cases, at 4 cents per case?

Mr. BIRCH. I presume it would. I have not gone into the details of it.

The CHAIRMAN. You voluntarily pay this tax, then, and release the fry also?

Mr. BIRCH. That is my understanding.

The CHAIRMAN. That is very generous.

Mr. BIRCH. You do not do both. For so much fry that you release you do not have to pay so much taxes. Just the details of that I can not tell you.

Senator DILLINGHAM. He does one or the other.

The CHAIRMAN. But he says that, as a matter of fact, he does both.

Mr. STEELE. No, Mr. Chairman.

The CHAIRMAN. Then let us get it clear.

Senator PILES. He does both, in this way—he partly pays tax and partly releases fry.

Senator FRAZIER. Not both at the same time?

Senator DILLINGHAM. No.

The CHAIRMAN. That is to say, you release some fry and pay some tax?

Mr. BIRCH. That is it.

The CHAIRMAN. How much tax and how much fry?

Mr. BIRCH. I can not tell you the details.

The CHAIRMAN. It has been, in a vague way, the understanding down here that this provision about releasing fry is not lived up to. Can anybody tell, except by taking the word of the canning and fishing companies for it, as to how much fry they do release?

Mr. BIRCH. I presume they can, Mr. Chairman. I am not prepared to go into the details of that. That is not my business. But if it is your desire to get all that information, we would be perfectly willing and, in fact, only too glad to furnish it to you, showing exactly what our companies do in that way.

The CHAIRMAN. I think our committee is more or less interested in the repeal of this fish-tax law and this provision about the release of fry, which went through Congress without ever touching this committee, and we should be glad to have all the information we can get upon that subject.

Mr. BIRCH. If I may say so here, I think there is a gentleman right in the room that has some familiarity with that matter—perhaps more than I have. I think Mr. Webb might know something about that.

(Mr. John Sidney Webb arose.)

The CHAIRMAN. We shall be glad to hear from you, but not right now, Mr. Webb.

Mr. WEBB. I have not any details such as Mr. Birch suggests.

The CHAIRMAN. The details are important.

Senator PILES. Anyway, Mr. Birch, what I understand you to say is this: That sometimes you pay the tax in whole or in part, and sometimes you furnish the fry?

Mr. BIRCH. That is my understanding of it.

The CHAIRMAN. Who determines that? Just you?

Mr. BIRCH. That I do not know; I am not prepared to say.

The CHAIRMAN. Very well.

Mr. BIRCH. As to the details, if you desire me to obtain that information to give to you at some other time, I will do so.

The CHAIRMAN. We should be very glad to have it.

Senator FRAZIER. You do not know what proportion of tax you pay and what proportion of fry you furnish?

Mr. BIRCH. Not at this time.

Senator DILLINGHAM. Mr. Chairman, I will suggest that when the subcommittee were in Alaska, under the old law requiring the canneries to liberate fry in proportion to the number of fish taken out, the Government had inspectors that visited those hatcheries at stated times and made examinations and calculations. I do not know how far they were able to determine with accuracy the number of fry that were put in by the canneries, and I do not know whether that same method prevails now. Do you know?

Mr. BIRCH. I really do not know.

Senator DILLINGHAM. Whether that system of inspection prevails?

Mr. BIRCH. I do not know. I presume they do have inspection.

Senator DILLINGHAM. I know it prevailed at that time, because I met the inspectors there. I met them at Karluk. They inspected the hatcheries, their capacity, and the work they were doing, and stayed a considerable length of time at each one of them.

The CHAIRMAN. In this connection—perhaps we might as well take this matter up right here and get through with it as far as my questions are concerned—it has been stated before this committee that—

Out of \$11,000,000 worth of fish they took out of that territory last year, the Territory of Alaska did not get a dollar—

This refers back to the Guggenheims and Boyles—

They pay the bills by making an affidavit, as the Senator from Washington knows. The result is that they send up fleets of Chinese and Japanese into the waters of Alaska in May and get \$11,000,000 worth of salmon and can them. They are gone to-morrow. There are two watchmen at the cannery whom they leave there.

Senator DILLINGHAM. Whose statement is that?

The CHAIRMAN. That is the statement of Delegate Wickersham. He says:

On the other side of the line over there—

This part of it was read yesterday—

We know what concessions are. The Guggenheims and Boyles are in the possession of the whole of the Klondike gold fields to-day by concessions. They have absolutely the control of that whole country by a grant of concessions by the Government of the Yukon Territory. We do not want that in Alaska. We do not want our fisheries granted.

What is your statement as to sending up fleets of Chinese and Japanese into the waters of Alaska in May?

Mr. BIRCH. That is correct so far as sending up Chinese labor is concerned. That is done in all the canneries. It is the only sort of labor they can get. They do the canning and Italians and mixed labor do the fishing. The Chinamen do not do the fishing.

The CHAIRMAN. You say that is the only labor you can get for that purpose?

Mr. BIRCH. That is the only labor we can get.

The CHAIRMAN. You stated that you took out 300,000 cases. What would be their value? It is stated here to be \$11,000,000.

Mr. BIRCH. No; the total pack of Alaska amounts to about \$11,000,000. But I should like to explain that there is a great deal of detail connected with that business. Of that \$11,000,000 there is a great deal that is tin-plate boxes and labels, and a very large percentage of it is labor. The fish themselves amount to a very small amount, as to the cost.

The CHAIRMAN. So that the \$11,000,000—

Mr. BIRCH. Is the total amount of the pack.

The CHAIRMAN. It is the whole pack, and involves not only the value of the fish, according to what your statement is—

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Not only that, but the tin cans, the casing, the labor, and everything?

Mr. BIRCH. Everything. It is the total amount of value.

The CHAIRMAN. What proportion does the amount that you put out bear to the total \$11,000,000? You gave it a moment ago in terms of cases.

Mr. BIRCH. 300,000 cases. That would be about \$1,200,000 of our money—the amount of our pack.

The CHAIRMAN. \$1,200,000?

Mr. BIRCH. \$1,200,000.

The CHAIRMAN. That is to say, somewhere between a ninth and a tenth of the total?

Mr. BIRCH. Yes; or it might be a trifle more than that.

The CHAIRMAN. A ninth of the total. The total is \$11,000,000, and your part is \$1,200,000?

Mr. BIRCH. Our part is \$1,200,000.

The CHAIRMAN. That is easily deduced. Is that all of the properties and business, so far as this branch of the steamship transportation, fisheries, canning, etc., are concerned, that you conduct? Is that all of that branch of the business? I am coming in a moment to another. What I am trying to do is to divide your properties and your business into classes.

Mr. BIRCH. Yes, sir.

The CHAIRMAN. First, steamship lines, canning, and fisheries.

Mr. BIRCH. Yes, sir; you have disposed of those.

The CHAIRMAN. Very well. I have here in my notes a reference to the mining property that you own, known as the Bonanza mine—

Senator PILES. May I ask a question on the subject of fish? You say the total output, including labor, cans, and everything, is about \$11,000,000?

Mr. BIRCH. The total value of the pack as sold to the public amounts to about \$11,000,000.

Senator PILES. What percentage of that is actual fish?

The CHAIRMAN. He has just answered that, Senator.

Senator PILES. I did not hear him if he did.

The CHAIRMAN. Yes; he said it was about one-ninth.

Senator PILES. You misunderstood him. He did not answer the question at all.

Mr. BIRCH. The value of the fish? I could not give you that figure at this time, but it is a very small amount.

Senator PILES. Is it one-fifth, one-fourth, one-sixth, or what?

Mr. BIRCH. I should only be guessing, now, if I told you that. But as I tried to explain, that is made up of the material, such as tin plate, labels, and boxes, including transportation and everything connected with the pack. It also includes the salmon themselves.

Senator PILES. You do not know, then, what the canneries actually pay for the fish?

Mr. BIRCH. Not at this time.

Senator PILES. What part of this \$11,000,000?

Mr. BIRCH. No, sir.

Senator PILES. I understand that you have not the figures with you?

Mr. BIRCH. No, sir.

Senator PILES. That is all.

The CHAIRMAN. Referring to the Bonanza mine, is that the name of all of your mining properties?

Mr. BIRCH. No, sir; the name of all the mining properties is the Kennecott Mines Company.

The CHAIRMAN. The Kennecott Mines Company?

Mr. BIRCH. The Bonanza mine is one of the claims that is owned by the Kennecott Mines Company.

The CHAIRMAN. What is the Bonanza mine—copper, gold, or what?

Mr. BIRCH. Copper; and it also contains some silver.

The CHAIRMAN. Is that under operation now?

Mr. BIRCH. Yes, sir; that is, they are developing the property, but not shipping.

The CHAIRMAN. Just where is that located?

Mr. BIRCH. One hundred and ninety-nine miles from Cordova. Shall I show you on the map?

The CHAIRMAN. I was going to ask you, a little bit later, to locate all of these places on the map, if you will be so kind as to do so. Who originally owned this mine?

Mr. BIRCH. It was owned by the Alaska Copper and Coal Company—that is, previous to the syndicate's purchase, you mean?

The CHAIRMAN. Yes.

Mr. BIRCH. Or the original locators?

The CHAIRMAN. Previous to the syndicate's purchase?

Mr. BIRCH. The Alaska Copper and Coal Company.

The CHAIRMAN. You bought it from them?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. What did you pay for it?

Mr. BIRCH. We paid something under \$3,000,000 for the property.

The CHAIRMAN. Something under \$3,000,000. That is a part of the mining properties. Now, what is the other part of the mining properties?

Mr. BIRCH. This purchase price included all of the copper properties which the Alaska syndicate owned.

The CHAIRMAN. Where are the remainder of the copper properties outside of the Bonanza mine, located?

Mr. BIRCH. They are all adjacent.

The CHAIRMAN. They are all in the immediate vicinity?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. What would you estimate the value of all those copper properties to be?

Mr. BIRCH. They have not any value without transportation.

The CHAIRMAN. I know; but assuming transportation?

Mr. BIRCH. Are you speaking of the net value?

The CHAIRMAN. Well, yes.

Mr. BIRCH. I had better answer that, Mr. Chairman, by telling you the amount of ore which we have blocked out. It is better than to put any prospective value upon the property. We have blocked out in the neighborhood of \$6,000,000—net, blocked out. The rest is prospective.

The CHAIRMAN. What would be your judgment as to the value, assuming that you had your railroad built up there, of the whole property?—not only what you have blocked out, but as business men dealing with the fair value of the whole thing?

Mr. BIRCH. The values that I have given you are only those after we have transportation.

The CHAIRMAN. Stopping right at this point about transportation: These mines are located up the Cooper River from Cordova, are they not?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. The railroad goes up the Copper River Valley Pass?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. That is built to the mines now?

Mr. BIRCH. No, sir; it is built 102 miles, and it is expected that it will be completed to the mines by November of this year.

The CHAIRMAN. Leaving how many miles still to be built?

Mr. BIRCH. Leaving 97 miles to complete.

The CHAIRMAN. That is being built by the Alaska syndicate under its contract?

Mr. BIRCH. By the Katalla Company.

The CHAIRMAN. The same thing?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Of course, then, it may be assumed that the road, for practical purposes, is already completed, because it is now under construction?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And 102 miles of it are done?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. So the question of transportation is solved so far as your mines are concerned?

Mr. BIRCH. Yes, sir; if we—

The CHAIRMAN. That finishes up copper. What about coal properties?

Mr. BIRCH. We own no coal properties.

The CHAIRMAN. I have not had a chance to read your hearings; but I remember that yesterday you said that your mining properties were held by the Katalla Company.

Mr. BIRCH. No, sir; the mining properties are owned by the Alaska syndicate.

The CHAIRMAN. Very well—the Alaska syndicate; and that they included (if I am wrong in my recollection you can correct me, as I have not had a chance to read your hearings) mining properties of every kind, including coal as well as copper?

Mr. BIRCH. We own no coal; we have not any coal properties.

The CHAIRMAN. How many thousand acres did you say you owned—3,000?

Mr. BIRCH. The total acreage that we own?

The CHAIRMAN. Yes.

Senator FRAZIER. Is that of copper, or what?

The CHAIRMAN. Of everything.

Mr. BIRCH. All mining land—here it is. The Kennecott Mines Company, which is owned by the Alaska syndicate, and is the only mining property owned by the Alaska syndicate, consists of 32 lode claims and 18 placer claims, embracing a total acreage of approximately 3,240 acres.

The CHAIRMAN. That embraces—

Mr. BIRCH. That embraces everything that the Alaska syndicate owns in the way of mining property in Alaska.

The CHAIRMAN. What mining properties, except copper, are there in those 3,240 acres?

Mr. BIRCH. No other mining properties.

The CHAIRMAN. Just copper?

Mr. BIRCH. Just copper, and some silver that is in the ore.

The CHAIRMAN. What would you estimate the value of that whole 3,240 acres to be?

Mr. BIRCH. I have given you that, Senator.

The CHAIRMAN. Oh, that is the same thing as the Bonanza mines?

Mr. BIRCH. The values I have given you represent the value of this property.

The CHAIRMAN. Do you own any timber lands there?

Mr. BIRCH. No, sir; except that there is timber on some of these claims.

The CHAIRMAN. Please tell the committee where your railroad runs; from what points to what point?

Mr. BIRCH. The railroad starts at Cordova, on Cordova Bay, and runs up the Copper River Valley as far as the mouth of the Chitina. Then it branches off, goes up the Chitina River, and the terminus is the Kennecott River, at the foot of National Creek.

The CHAIRMAN. Under what law was that built?

Mr. BIRCH. Under the general law.

The CHAIRMAN. Under the general law?

Mr. BIRCH. Under the general law.

The CHAIRMAN. Not under any special bill passed by Congress?

Mr. BIRCH. No, sir.

The CHAIRMAN. Is there room for any other railroad in the Copper River Valley?

Mr. BIRCH. Yes, sir; lots of room.

Senator DILLINGHAM. Your road does not go through the Keystone Pass?

Mr. BIRCH. No, sir.

Senator DILLINGHAM. It does not?

Mr. BIRCH. No, sir.

Mr. STEELE. Mr. Chairman, may I interrupt you right here to state that under the law, wherever the route is so narrow as to constitute a pass or defile, then any other road has the right to use the tracks of the road already there.

The CHAIRMAN. By making, of course, proper traffic agreements?

Mr. STEELE. By making proper traffic agreements.

The CHAIRMAN. So that your properties consist of mining property, the transportation company, the fishery and canning business, and the railroad?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And the lighterage business?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Anything else?

Mr. BIRCH. No, sir.

The CHAIRMAN. What is the whole thing worth?

Mr. BIRCH. That all depends upon the development in Alaska. So far we have invested in the neighborhood of \$15,000,000 there.

The CHAIRMAN. Has the syndicate examined carefully into the copper resources of Alaska?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. What do you say as to the value of other copper properties except those that you own in Alaska?

Mr. BIRCH. The reason for building a railroad in Alaska is because of the prospective development that will go on there. We have had examinations of the whole country. There is no development in the country, and there will not be any development unless there is transportation. We are willing to take that gamble. I have personally examined a great many of the copper properties. In fact,

my business is that of a mining engineer. The Bonanza mine, while it has considerable value, has not a great tonnage development; nor is there any tonnage development in the interior. It is all prospective. Our reasons for coming down to Cordova were to get into the coal, to get that tonnage; but because nobody could give us any coal, nobody having gotten any titles, we had to stop building the road over there; but we continued on up the Copper River Valley. As the country develops we will advance the railroad; but we have got to be shown that there is sufficient tonnage.

The CHAIRMAN. Do you contemplate advancing the railroad to the Tanana Valley?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And the Fairbanks mining district?

Mr. BIRCH. Yes, sir; we contemplate doing it eventually, if it will develop, as we think it will in time. It is a wonderful agricultural country in the Tanana Valley. I was through there last summer. I went over the entire route from the Copper River over into the Tanana Valley and down. I think it has a great future.

The CHAIRMAN. Returning to my question: You have examined these copper resources of Alaska, you say. What would you say—in a rough way; of course you can not estimate it definitely, but in a rough way—would be the comparative proportion of the copper properties which you own and the copper resources of the remainder of the territory, so far as you have examined them?

Mr. BIRCH. We only have a very small portion of the copper-bearing district.

The CHAIRMAN. Where is the remainder of the copper-bearing district located? Is it near you?

Mr. BIRCH. I can show you very well on a map, if you care to see it.

The CHAIRMAN. Let us see it, please, at this point.

(Mr. Birch then produced a large map.)

Senator DILLINGHAM. Which is north and which is south?

Mr. BIRCH. That is north, and that is south [indicating]. Here is Cordova. Here is the line of the railroad; and these that I have indicated here are the various copper properties which we have examined.

The CHAIRMAN. Where is your Bonanza mine on this map?

Mr. BIRCH. Here [indicating]. All these [indicating] are outside properties.

The CHAIRMAN. These places where we see these little red marks and numbers are the copper properties you have examined?

Mr. BIRCH. Yes, sir—belonging to other people, which we have no interest whatever in.

The CHAIRMAN. Do you know what people hold them?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Can you give the names of the people who hold them?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Please do so.

Mr. BIRCH. The map shows. I did that myself.

The CHAIRMAN. You do not want to submit this map and leave it with the committee, do you?

Mr. BIRCH. Yes, sir; if they care to have it.

The CHAIRMAN. Can you spare it?

Mr. BIRCH. I shall be very glad to give it to the committee.

The CHAIRMAN. The committee will be very much obliged.

Senator DILLINGHAM. Does this map show what mines there are held by the syndicate?

Mr. BIRCH. Yes, sir; the Kennecott Mines Company is the only property owned by the Alaska syndicate and is one out of thirty-one properties.

The CHAIRMAN. I see that the owners of these properties are nearly all companies, with some individuals.

Mr. BIRCH. Those are the names under which they are known.

The CHAIRMAN. Those are the names of the mines?

Mr. BIRCH. Yes, sir; the companies that control them.

The CHAIRMAN. The companies that control them. Are any of those mines in operation?

Mr. BIRCH. No, sir. They are in course of development, but not in operation.

The CHAIRMAN. By which you mean——

Mr. BIRCH. I mean that they are holding them by doing their assessment work, and in some cases driving tunnels, and doing a little work as best they can with their present means of transportation.

The CHAIRMAN. Is there any arrangement or understanding of any kind, directly or indirectly, between the Alaska syndicate or any persons representing it and the remainder of these mines, or any of them——

Mr. BIRCH. No, sir.

The CHAIRMAN (continuing): By which, when the railroad is built or any other transportation facilities are perfected, you will take on these properties?

Mr. BIRCH. No, sir; we have no arrangement with any of them.

Mr. STEELE. May I ask a question right there, Mr. Chairman?

The CHAIRMAN. Certainly.

Mr. STEELE. Mr. Birch, will you please state if it is possible for those mines to be developed until transportation is furnished in order to take in the necessary machinery?

Mr. BIRCH. No, sir. They are in the same position as we are. The cost of transportation to-day is prohibitory; and until there are suitable transportation facilities there will be no development. They can not afford to open up the properties.

The CHAIRMAN. They could only get their machinery and other necessary equipment up over your road?

Mr. BIRCH. We hope so.

The CHAIRMAN. Well, as a matter of fact is there any other way?

Mr. BIRCH. Not unless there is another railroad built.

The CHAIRMAN. Yes; assuming that no other railroad will be built on this particular route, they would have to take anything that they opened up their mines with over your road, and also take out their ore over your road; would they not?

Mr. BIRCH. If they resorted to the railway.

The CHAIRMAN. Is there any other way? You said just a moment ago that there is no other way of taking up the machinery necessary to operate the mines.

Mr. BIRCH. Not unless they sled it in.

The CHAIRMAN. I understood you to say that they could not get it up except over this railway.

Mr. BIRCH. Not practically.

The CHAIRMAN. Well, of course they would do it practically; they would not do it theoretically.

Mr. STEELE. You mean, by "practically," that the expense of sledging it in would be too great to be practical?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And therefore, of course, if they send it in at all, they must send it over your railway; and the same is true with reference to the shipment of ore out?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Will you indicate to me, for my own information, where your copper property is?

Mr. BIRCH. The Bonanza mine?

Senator FRAZIER. Yes.

Mr. BIRCH. Right here—Nos. 3 and 4 (indicating).

The CHAIRMAN. As a practical proposition, in view of the fact that the Alaska syndicate controls the road by which the machinery to develop these other properties which you do not own must be transported to them, and without which they can not be operated, and in view of the fact that the Alaska syndicate controls the road over which they must ship their ore to the sea coast, does it not seem to you, Mr. Birch, that the Alaska syndicate has a tremendous advantage for the purchase of these other properties?

Mr. BIRCH. No, sir; they would all be treated alike. The Government would see to that.

The CHAIRMAN. How could the Government see to that?

Mr. BIRCH. Through the matter of rates.

The CHAIRMAN. Now, I want to ask three or four more questions that I have jotted down here, and then I will be through. I had to jot things down as best I could; we all did, yesterday.

You put in yesterday the proposition or the contract, which you called an option, from these three gentlemen to the Alaska syndicate, which was accepted by the telegram of Daniel Guggenheim of December 7, found on page 84 of the hearings. That perfected that option, did it not?

Mr. BIRCH. So far as we were concerned.

The CHAIRMAN. That was the telegram by which you exercised or took up the option?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. That was December 7?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. The lands at that time were not patented, were they? I understood you to say that they had gone to what?

Mr. BIRCH. They had their final receipts—final entry, it is called.

The CHAIRMAN. But they were not patented?

Mr. BIRCH. No, sir.

The CHAIRMAN. What, if anything, did you do toward securing or getting patents to those lands after you took up the option?

Mr. BIRCH. We did nothing toward securing them. It was not in our province to do anything to secure them. We left that to the other people.

The CHAIRMAN. The reason I ask that is that I supposed that you would not have taken up the option formally on December 7 if you had not considered it valuable, and therefore that after taking it up you would do what you could to get patents.

Mr. BIRCH. Our attorneys passed on the validity of our acts. They looked into the legality of them.

Mr. STEELE. May I call your attention, Mr. Chairman, to a provision of the agreement?

The CHAIRMAN. Certainly.

Mr. STEELE. Under this option agreement we were not called upon to pay any money or do anything at all until the patents had been obtained, and the corporation formed, and the patents conveyed to the corporation, which was then ready to issue stock to us.

The CHAIRMAN. What, if anything, have you done toward the development of those lands?

Mr. BIRCH. Which lands do you refer to?

The CHAIRMAN. I refer to the lands covered by the option which you took up on December 7.

Mr. BIRCH. We have never done anything with the property. It never was in our hands to do anything with.

The CHAIRMAN. Do you know of any other properties, outside of the ones named, in which the Messrs. Guggenheim and Morgan are interested?

Mr. BIRCH. They have no other interests, directly or indirectly.

The CHAIRMAN. I see here this list of people or companies, etc., that own these copper properties. Do you know of any other persons or estates holding any mineral lands of any kind in Alaska, or interested in them, except as named on the map there?

Mr. BIRCH. Alaska is a big Territory, and there are a great many people there. I could not commence to name all the people that are interested in mining property in Alaska.

The CHAIRMAN. The purpose of all these questions is to narrow down the exact holdings that you represent in Alaska. Are there any other persons or estates holding lands, and especially mineral lands, in Alaska, in which the Messrs. Guggenheim and Morgan are interested?

Mr. BIRCH. We hold a very small percentage of the mining property of that district, to say nothing of all Alaska; and there are thousands and thousands of people owning lands in Alaska over which we have no control, directly or indirectly.

The CHAIRMAN. You answered a moment ago that the proportion of the mineral resources of Alaska which the Alaska syndicate own is very small compared with the total. What I am asking now—it may be an idle question—is whether or not you know of any other persons or companies or estates holding any of these lands or resources in which the gentlemen whom you represent are interested?

Mr. BIRCH. Neither the syndicate nor the Messrs. Guggenheim have any other interest than that which I have stated in any mining property.

The CHAIRMAN. If I remember rightly, you said that the Northwestern Fisheries Company was purchased by you from John Rosene, or the negotiations were made through him?

Mr. BIRCH. We purchased the Northwestern Commercial Company's stock, which company holds in its treasury the total capitalization of the Northwestern Fisheries Company.

The CHAIRMAN. What connection did John Rosene have with that? You mentioned that yesterday.

Mr. BIRCH. He was at that time president of the Northwestern Commercial Company.

The CHAIRMAN. The committee has had a communication from Mr. John E. Ballaine. Has your syndicate, or any member of it, had any dealings with Mr. Ballaine?

Mr. BIRCH. No, sir.

The CHAIRMAN. He has made no propositions to you, or anything of that kind?

Mr. BIRCH. No, sir.

The CHAIRMAN. You have never conferred with Mr. Ballaine about anything?

Mr. BIRCH. No, sir. I have only met him.

The CHAIRMAN. You have named, have you, all of the persons or firms represented in the coal interests which you brought up yesterday, referred to in that option?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Could you give the committee the names of any persons, if there are any persons, who are working for the Alaska syndicate in any other capacities than those of laborers in your mines or officers of your roads in Alaska, or are there any? In other words, have you anybody locating lands up there, or anything of that kind?

Mr. BIRCH. No, sir; we have no men in our employ locating any lands, and never had. I have several assistants in Alaska who help me in our mining operations. Then the railroad company have their officers, who direct the operation of the railroad, as well as the steamship company.

The CHAIRMAN. About those assistants—what do those assistants do?

Mr. BIRCH. They are at the mine, doing engineering work and such as that.

The CHAIRMAN. You spoke yesterday about this conference to arrange for this option having been held at Salt Lake City. Why was it held at Salt Lake City? Mr. Eccles lived at Denver, did he not?

Mr. BIRCH. No, sir. Mr. Eccles lives in New York City, but that was a convenient point for meeting. He could not very well go to Seattle, and, in fact, he was on his way to Nevada; and it was just as convenient for the Messrs. Cunningham and Moore.

The CHAIRMAN. What was the price paid? Oh, that is stated, is it not?

Mr. STEELE. Yes, sir.

The CHAIRMAN. That is stated in the option—the price paid.

Mr. BIRCH. There was never any price paid. It is merely an optional agreement. It is not a contract.

The CHAIRMAN. I believe you stated yesterday—or if you did not, you can state it now—who represented each side in this Salt Lake City conference. It was Mr. Eccles, I believe, on one side, was it not?

Mr. STEELE. Yes, sir.

The CHAIRMAN. And Moore and Cunningham, and who else?

Mr. BIRCH. A. B. Campbell, M. C. Moore, and Clarence Cunningham, for themselves and as a committee representing their associates, signed this agreement in the presence of Mr. S. W. Eccles and Curtis H. Lindley, who represented the Alaska syndicate.

The CHAIRMAN. I think that is all I have jotted down.

Senator FRAZIER. I want to ask you a question or two. Is this Alaska syndicate a corporation organized under the laws of any State? If so, what State?

Mr. BIRCH. No, sir; it is not incorporated.

Senator FRAZIER. Not incorporated at all? Is it a partnership?

Mr. BIRCH. I should like to refer you to Mr. Steele, the general counsel of the company, who is more familiar with the arrangement between J. P. Morgan & Co. and the Messrs. Guggenheim.

Mr. STEELE. I can answer all those questions, Senator, as soon as you get through with Mr. Birch.

Senator FRAZIER. This holding company, the Alaska syndicate, is not a corporation at all then, as I understand you?

Mr. BIRCH. As I understand it.

Senator FRAZIER. It is a combination of individuals who have gathered themselves together and acquired stock in other corporations, the names of which you have given. Is that correct?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Has the Alaska syndicate had any capital stock?

Mr. BIRCH. Not that I know of.

Senator FRAZIER. Or any fund or any determination as to the amount of capital invested in the enterprise?

Mr. BIRCH. As to that, I should like to refer you to Mr. Steele.

Senator FRAZIER. You do not know anything about that?

Mr. BIRCH. I am not so familiar with the contract or agreement which exists between the firm of J. P. Morgan & Co. and the Messrs. Guggenheim. I am more concerned in the operating of the company, looking after its affairs.

Senator FRAZIER. Has this company, or this syndicate, either in its own right or as holding the stock of any other company, undertaken to build or has it any interest in any other road except this Copper River road to which you refer?

Mr. BIRCH. No, sir; the Alaska syndicate has no interest in any other railroad in Alaska.

Senator FRAZIER. Have the Guggenheims or the Morgans or any of those interested in this syndicate any interest in any other road?

Mr. BIRCH. Not that I know of.

Senator FRAZIER. Is there another railroad in Alaska outside of the English-owned road from Skagway?

Mr. BIRCH. Yes, sir; there are several.

Senator FRAZIER. What roads are they?

Mr. BIRCH. I might say here that through the Northwestern Commercial Company they have some stock in what is called the Northwestern Development Company, which is at Nome. It has a little road running out of Nome, and their interest is a very small proportion.

Senator FRAZIER. They acquired that interest by reason of their acquisition of the stock of the Northwestern Commercial Company?

Mr. BIRCH. Of the Northwestern Commercial Company, but they have no interest in the management of it. In fact, I can not tell you the names of the officers of the company, and I believe to-day that the company is in bankruptcy.

Senator FRAZIER. Where does that road run to and from what point? What are the termini of that road?

Mr. BIRCH. It starts at Nome and ends out in the swamp somewhere.

Senator FRAZIER. What is the length of it?

Mr. BIRCH. I am not certain as to that.

Senator DILLINGHAM. Is that the Wild Goose road?

Mr. BIRCH. The Wild Goose road.

Senator FRAZIER. What other road running from the seaboard is in Alaska than the one which you have mentioned?

Mr. BIRCH. The Alaska Central Railway and the White Pass and Yukon.

Senator FRAZIER. Where does the Alaska Central strike the sea?

Mr. BIRCH. That starts at Seward, on Resurrection Bay.

Senator FRAZIER. And to what point does it run?

Mr. BIRCH. That runs in the Kenai Peninsula, headed toward the Matanuska coal fields.

Senator FRAZIER. How long is it? How much of it has been constructed?

Mr. BIRCH. I think about 70 miles have been constructed. I am not very familiar with that. The total distance is about 190 miles to the coal field.

Senator FRAZIER. What coal field is it proposed to reach by it?

Mr. BIRCH. The Matanuska coal fields.

Senator DILLINGHAM. That road is now in the hands of a receiver, is it not?

Mr. BIRCH. I believe so.

Senator FRAZIER. Has the Alaska syndicate, or anyone connected with it, any interest in that road?

Mr. BIRCH. No, sir; none whatever.

Senator FRAZIER. So the only road in which any of the people connected with the Alaska syndicate have any interest is the Copper River road?

Mr. BIRCH. So far as I know.

Senator FRAZIER. Would you know if they had any interest in any other road?

Mr. BIRCH. I would.

Senator FRAZIER. Referring to the Copper River road—I designate it as the Copper River road, though I am not sure that that is the legal charter name—what is the charter name of the road?

Mr. BIRCH. The Copper River and Northwestern Railway.

Senator FRAZIER. Was that road, the Copper River and Northwestern Railway, originally contemplated to start from Cordova?

Mr. BIRCH. No, sir; it was originally contemplated to start from Valdez.

Senator FRAZIER. Were any terminal rights or other properties acquired at Valdez, and was there any expenditure of money at that point, or from that point?

Mr. BIRCH. Yes, sir; there was something over \$300,000 expended; and their rights were given to them under the general railroad act applying to Alaska.

Senator FRAZIER. Did they build any road from that point?

Mr. BIRCH. They expended about three hundred and some odd thousand dollars in building a grade and preparing terminal ground, but it was abandoned after our attention had been called to the coal fields, and our engineers who went up to examine the different routes decided upon the Cordova route because of its proximity to the coal, and the easy grades up the Copper River.

Senator FRAZIER. Was that before or after you secured this option with the Cunninghams?

Mr. BIRCH. That was before.

Senator FRAZIER. But your attention had been called to the location of this Bering coal field?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. And in order to reach that, you changed your terminus down to Cordova?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. And abandoned the properties and interests that you had at the other point?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Were any other companies or individuals undertaking to build a road at Cordova at the time your company, the Alaska Company, changed its base down to that point?

Mr. BIRCH. Yes, sir; there was another company controlled by M. J. Heney and Mr. Graves, of Close Brothers, of London. They had built and expended about five hundred and forty odd thousand dollars, which we took over.

Senator FRAZIER. Had they acquired terminal facilities at Cordova?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Were they valuable?

Mr. BIRCH. They were only valuable for railroad construction.

Senator FRAZIER. Your company, or your syndicate, took over the properties of this other company?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Of Graves and Heney?

Mr. BIRCH. Yes, sir; it was what was called the Copper River Railway.

Senator FRAZIER. What did they pay for that?

Mr. BIRCH. I think about \$540,000. Whatever money they had expended—I think it amounted to \$540,000—they were allowed to participate in the syndicate to that amount.

Senator FRAZIER. How was the payment for their properties made?

Mr. BIRCH. By participation and some cash.

Senator FRAZIER. What do you mean by "participation?"

Mr. BIRCH. It was considered the same as cash.

Senator FRAZIER. Were they given stock in the Copper River Railway in consideration for their properties and expenditures there?

Mr. BIRCH. Not stock in the Copper River Railway. They were given credit in the Alaska syndicate for the expenditure of that much money.

Senator FRAZIER. How was their interest, through the sale of their properties, represented in the Alaska syndicate? You say that is not a corporation and has no stock.

Mr. STEELE. May I explain that to you, Senator?

Senator FRAZIER. You may, if you will.

Mr. STEELE. It was arranged in this way: The money expended by those gentlemen was ascertained to be about \$540,000. For that they were given a \$500,000 interest in the syndicate, just to the same effect as if they had paid in \$500,000 in cash. The balance of about \$40,000 was paid to them in cash. In other words, they received a participation of \$500,000 in the syndicate, to the same effect as if they had subscribed \$500,000.

Senator FRAZIER. While you are explaining that, let me ask you if that gave these gentlemen an interest in all of the properties that the Alaska syndicate had acquired in Alaska?

Mr. STEELE. All the properties they had acquired and all the properties they might afterwards acquire.

Senator FRAZIER. What percentage did that give them in the Alaska syndicate's holdings there?

Mr. STEELE. At the time the agreement for what we call the Alaska syndicate was made, it was thought that the total amount of money to be expended would be \$10,000,000—that it would not exceed that amount. This was simply an agreement between J. P. Morgan & Co. and M. Guggenheim Sons by which each of them agreed to contribute half up to this amount. It was not a corporation or anything; it was just an agreement, as it were, between two individuals—an association or a partnership to that extent.

Senator FRAZIER. And designated as the Alaska syndicate?

Mr. STEELE. Called for convenience the Alaska syndicate; yes, sir.

Senator FRAZIER. It had no charter?

Mr. STEELE. No charter of any sort. It was just exactly as if any two men should form an agreement for the purpose of conducting a venture in Alaska.

Senator FRAZIER. The purpose was to finance different schemes in Alaska; to buy up the stock of different corporations doing various kinds of business, and build railroads, and develop copper properties and other interests in Alaska? That was the purpose of the organization or formation of this Alaska syndicate, was it not?

Mr. STEELE. Generally; yes. The arrangement was that they could not go into anything that both parties did not agree to. If either party said "No, we will not go into that," then that stopped it.

Senator FRAZIER. Mr. Birch, was the terminus at Cordova so occupied by this company which your Alaska syndicate bought out as to give them practically a monopoly, or the best terminus that was obtainable at that place?

Mr. BIRCH. No; it would not give them a monopoly, but they were the people that called our attention to the coal field and the advantages of their route, and it was their proposition. They came to us.

Senator FRAZIER. Why did the Alaska syndicate buy them out if they could have obtained equally as good a terminus there for themselves?

Mr. BIRCH. Because they had expended their money in good faith, and if the Alaska syndicate determined to build there also they

would have had to expend the same amount, and it was simply taking in additional capital, you might say.

Senator FRAZIER. Did they take their properties at the actual expenditures that they had made?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Or did they give them a profit on their expenditures?

Mr. BIRCH. No, sir; none whatever. Those accounts were audited in detail. I went over them and passed upon them myself; the auditor went over them and made his report; and it was the money actually expended. The first figures were supposed to have amounted to about \$500,000. We agreed to allow them to participate for whatever they expended. It amounted to about \$540,000. They participated in the syndicate to the amount of \$500,000, and we gave them the \$40,000 in cash, which was to clear up some little indebtedness of theirs.

Senator FRAZIER. Cordova Bay is one of the best, if not the best, ports in Alaska, is it not?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. It is really the key to the outlet for the development of the interior portion of Alaska, is it not?

Mr. BIRCH. No; I will not say it is the key to it. It is the most practical route, though.

Senator FRAZIER. The most practical route and the best harbor?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. And it is the nearest to the coal fields, and the most practicable route to the copper country?

Mr. BIRCH. It is the nearest to the Bering River coal fields, and the nearest to the Copper River country.

Senator DILLINGHAM. I want to inquire, right in that connection, whether it was contemplated by your company to build through to the Yukon River? And if so, by any other route than through the Tanana?

Mr. BIRCH. No, sir; our plans would be to build up the Copper River and over into the Tanana Valley, and down that way.

Senator DILLINGHAM. But not to go in the direction of Eagle?

Mr. BIRCH. No, sir.

Senator DILLINGHAM. Over anything that compares with the present military trail?

Mr. BIRCH. No, sir. Well, the present military road goes the way we would build.

Senator DILLINGHAM. Yes, but not through to Eagle?

Mr. BIRCH. No, sir.

Senator DILLINGHAM. You would not build through to Eagle?

Mr. BIRCH. No, sir. Well, I will state now that the government trail to Eagle is abandoned. They do not use it at all any more.

Senator DILLINGHAM. They do not use it at all. That is all. Go on, Senator.

Senator FRAZIER. When did this Alaska syndicate acquire the Bonanza mines?

Mr. BIRCH. They obtained a 40 per cent interest in November, 1906. They afterwards acquired the 60 per cent interest in the spring of 1909.

Senator FRAZIER. Was the Bonanza Company a corporation?

Mr. BIRCH. It was known as the Alaska Copper and Coal Company.

Senator FRAZIER. It was a corporation, then?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. And the Alaska syndicate acquired the stock?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. What did the Alaska syndicate pay for that stock?

Mr. BIRCH. A trifle under \$3,000,000; practically \$3,000,000.

Mr. STEELE. It was about \$12,500 less, was it not? One payment was discounted.

Senator FRAZIER. How was that payment made?

Mr. BIRCH. In cash.

Senator FRAZIER. Do you know how the Bonanza company, the name of which you gave, acquired the Bonanza properties from the Government?

Mr. BIRCH. They purchased the property from the original locators.

Senator FRAZIER. Had the original locators obtained patents from the Government?

Mr. BIRCH. The original locators, and afterwards the Alaska Copper and Coal Company, perfected the title to some of the property. The original locators had the locations. They sold such interest as they had. The Alaska Copper and Coal Company perfected title to the property after fighting a lawsuit which went through all the courts, and obtained their patents to the land from the United States Government.

Senator FRAZIER. You say to part of the land. Did they obtain patents to all the land—all of this three thousand and some odd acres?

Mr. BIRCH. The Alaska Copper and Coal Company did not own all of the 3,240 acres which I have mentioned. I do not remember the exact amount which they owned. Some of this land was acquired by the Kennecott Mines Company after the purchase of the stock of the Alaska Copper and Coal Company by the Alaska syndicate.

Senator FRAZIER. What proportion of the land was acquired by the Alaska syndicate or by the company which it owned a controlling interest in after it had acquired the Bonanza property?

Mr. BIRCH. A very small portion of the property, both as to value and as to acreage.

Senator FRAZIER. From whom did it obtain that portion of the land?

Mr. BIRCH. From the Government.

Senator FRAZIER. From the Government? Do you mean——

Mr. BIRCH. It was unlocated land which they took up for their protection, for use in the mining of their property. It has no value, or it has very little value, of itself, outside of its proximity to the original locations.

Senator FRAZIER. Was it copper property—mineral property?

Mr. BIRCH. Yes. It was done more for protection than for anything else.

Senator FRAZIER. Did this company enter the land itself, or secure individuals to enter it and get patents on it?

Mr. BIRCH. No; they took it up themselves.

Senator FRAZIER. How many tracts of land did this company enter in that way?

Mr. BIRCH. I forget now what it amounted to. It did not amount to very much.

Senator FRAZIER. More than one?

Mr. BIRCH. More than one claim?

Senator FRAZIER. More than one 160-acre tract—yes.

Mr. BIRCH. I think so. I think there were several of them.

Senator FRAZIER. Were they all entered in the name of this company?

Mr. BIRCH. No; I think they were entered in the names of some of the members of the company.

Senator FRAZIER. The company used the members to make the entries?

Mr. BIRCH. I think so.

Senator FRAZIER. And obtained the patents, and they were turned over to the company?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. The company furnished the money to pay for the lands and the expenses necessary to conform to the laws of the United States in entering them?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. And then took them over?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. These men that they used to enter them were mere dummies?

Mr. BIRCH. No, sir; they were not. They were interested right in the property.

Senator FRAZIER. Interested in the property?

Mr. BIRCH. In the company itself.

Senator FRAZIER. Did they enter them for their own use?

Mr. BIRCH. Why, yes; they were interested in the company itself. They did not resort to any dummy entrymen. It was not necessary. They did not care to.

Senator FRAZIER. You said that the company furnished the money that was necessary to pay the Government for the properties and to perfect the entries?

Mr. BIRCH. I did.

Senator FRAZIER. Then, if these individuals were entering them in their own right, why did they not furnish the money?

Mr. BIRCH. I do not quite get your question, Senator. These claims that have been located here, and which I mentioned, such lands as they took up afterwards, were taken up by people who were interested in the company; and I can not tell you now exactly the number of claims which they have taken up. It was only a few.

The CHAIRMAN. You are speaking now of the claims in the 3,200-acre tract?

Mr. BIRCH. Yes; the 3,240-acre tract. They were located in the names of the Kennicott Mines Company.

Senator FRAZIER. You do not know, then, what proportion of the 3,240 acres was entered after the Alaska syndicate acquired the control of the Kennicott Mines Company?

Mr. BIRCH. I can not say at this time.

Senator FRAZIER. But there were a number of tracts?

Mr. BIRCH. No; there were not a number of tracts. There were several tracts.

Senator FRAZIER. If there were several, there would be a number, would there not?

Mr. BIRCH. Well, if you put it that way.

Senator FRAZIER. You do not know whether there was one or half a dozen or a dozen?

Mr. BIRCH. Not at this time; I could not say.

Senator FRAZIER. But there were several tracts afterwards acquired by the process which you have just described?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. And those thus acquired were turned over to the company, the Kennicott Mines Company?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. You think those entries were made by stockholders or directors interested in this Kennicott Mines Company?

Mr. BIRCH. Yes, sir; I did it myself.

Senator FRAZIER. You did it yourself?

Mr. BIRCH. I did it myself.

Senator FRAZIER. Did you make an entry there?

Mr. BIRCH. Yes, sir; I think I am one of the locators.

Senator FRAZIER. You located a tract yourself? How much did you locate?

Mr. BIRCH. No; I was one of the locators.

Senator FRAZIER. How much did you locate?

Mr. BIRCH. I could not tell you that at this time.

Senator FRAZIER. More than one tract?

Mr. BIRCH. I think so.

Senator FRAZIER. You did? The understanding was, then, that you were to turn them over to the Kennicott Mines Company when you perfected your title?

Mr. BIRCH. No, sir; there was no understanding. I simply went ahead and did it. I was manager of the company, and the land was open for location, and I simply did it for my own protection.

Senator FRAZIER. You did it for your own protection, or for the protection of the company?

Mr. BIRCH. The protection of the people I was working for.

Senator FRAZIER. That was the company, was it not?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. And when you perfected your title you turned it over to the company?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Did you receive any compensation for it other than the expenditures that had been made?

Mr. BIRCH. I am in their employ.

Senator FRAZIER. You were in their employ?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. You were simply representing them, then, in making this location and acquiring this land?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. And when you had perfected your title and got a patent from the Government you turned it over to the company?

Mr. BIRCH. Yes, sir. I acted as their agent all the way through.

Senator FRAZIER. You acted as their agent. And did others acquiring property in like manner act as the agents of this company?

Mr. BIRCH. Yes; the names that were located—used in the location.

Senator FRAZIER. They were simply employees and those interested in the company?

Mr. BIRCH. No; they were interested in the company.

Senator FRAZIER. Well, you were an employee, were you not?

Mr. BIRCH. Yes, sir. Well, I was interested in the company, too—a stockholder.

Senator FRAZIER. And an employee?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. And do you not know what proportion of the 3,240 acres was thus acquired?

Mr. BIRCH. A very small portion. I could not say at this time.

The CHAIRMAN. May I ask a question there?

Senator FRAZIER. Yes.

The CHAIRMAN. Mr. Birch, how could the 3,200 acres—which involves, you say, 32 claims, or how many claims—

Mr. BIRCH. Thirty-two lode claims and 18 placer claims.

The CHAIRMAN. That is the 3,200 acres?

Mr. BIRCH. Yes, sir; 3,240.

The CHAIRMAN. In what other way except by individual entry could they be located?

Mr. BIRCH. In no other way that I know of.

The CHAIRMAN. So that the Alaska syndicate, or, rather, the Kennicott Mines Company and their predecessors, acquired their title, such as it may be, by the means of individual entry?

Mr. BIRCH. Yes, sir. We complied with the law in every way.

The CHAIRMAN. Well, I was not asking you about that. The only way, I take it, that you acquired any title that you may have was through individual entrymen, including yourself?

Mr. BIRCH. The way the Kennicott Mines Company obtained ownership to this property was through their purchase of stock of the Alaska Copper and Coal Company, which company purchased the interests of the original locators subsequent to that.

The CHAIRMAN. So that the title flowed from the original locators through the copper company to the Kennicott Mines Company?

Mr. BIRCH. All the land which has any great value.

Senator DILLINGHAM. I want him to finish his answer at this point.

The CHAIRMAN. Yes; go ahead and finish your answer.

Mr. BIRCH. After the purchase of the stock of the Alaska Copper and Coal Company by the Kennicott Mines Company, there was some land open for location around these original locations which I thought it best to take up for protection; and I went ahead and located it, and I used the names of the gentlemen interested in the company as their agent.

The CHAIRMAN. What persons or firms or estates comprised the Alaska Copper Company?

Mr. BIRCH. Mr. Norman Schultz and Mr. James H. Ralph; and I used my own name.

The CHAIRMAN. You were a stockholder in the Alaska Copper Company also?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And the Kennicott Mines Company acquired the stock of the Alaska Copper Company?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And the Alaska Copper Company got its titles to these properties through individual entrymen?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. You say that the Alaska syndicate paid the Kennicott Mines Company about \$3,000,000 for their properties?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. And that, you say, was paid in cash?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. What is the value that you put upon that property?

Mr. BIRCH. The value of the property—that is, the amount of the ore blocked out, what we call in sight, after we have gotten in the transportation—amounts to about \$6,000,000.

Senator FRAZIER. What proportion of the property have you blocked out in the way that you describe, so that you know approximately the value of the copper in sight?

Mr. BIRCH. We have done that by means of running tunnels, and—

Senator FRAZIER. I say, what proportion of the 3,240 acres has thus been developed?

Mr. BIRCH. Oh! A very small portion.

Senator FRAZIER. A very small portion?

Mr. BIRCH. But it has been done at the place where the mineral shows.

Senator FRAZIER. Can you form any estimate as to the extent of the copper deposits other than that which has been thus blocked out?

Mr. BIRCH. No; that is all prospective.

Senator FRAZIER. Have you made any prospective investigation of that and developed it in any way?

Mr. BIRCH. No, sir. We only have hopes.

Senator FRAZIER. You have hopes? You have very large hopes, though, I suppose?

Mr. BIRCH. It is according to who looks at it. I am perhaps the most visionary one about it.

Senator FRAZIER. Have you more than the one mine that you have developed to such an extent that you can know what the property is, probably, in sight?

Mr. BIRCH. Yes, sir. There is the Bonanza mine, and the Jumbo mine, and the National, and the Excelsior, and the Independence properties. They compose the Kennicott mines group.

Senator FRAZIER. And those four you have developed so that there is \$6,000,000 worth of copper in sight?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Are there any other mines on this property that have been tested or developed at all?

Mr. BIRCH. No, sir, except in a general way; but not developed except—

Senator FRAZIER. Have they been tested to such an extent that you can determine whether there is copper in them or not?

Mr. BIRCH. Yes; they show indications on the surface.

Senator FRAZIER. So that in reality you have only developed a very small proportion of this copper field which your company has acquired there?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. But you have developed enough to know that you have \$6,000,000 worth of copper in sight?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. You are unable to tell what the value of the copper on the remainder of the property is?

Mr. BIRCH. Yes, sir.

Mr. FRAZIER. But the indications are that it is very valuable copper property, are they not?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. You say your company was induced to change its terminus on the coast to Valdez because your attention was called to the coal field. What is the distance of the coal field from Cordova?

Mr. BIRCH. About 95 miles. It shows on this map. Here is Cordova and here is the distance—95 miles.

The CHAIRMAN. May I ask a question right there so as to clear up things as we go along?

Senator FRAZIER. Certainly.

The CHAIRMAN. Do you call these the coal fields?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Are these the Cunningham groups?

Mr. BIRCH. The Cunningham group is included in this. I will show you a large map showing the entire field.

The CHAIRMAN. We will come to that in just a moment. I want to locate it on this map here. Where is the terminus on this map of your road—here [indicating]?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And it runs to there [indicating], and then goes up the Copper River?

Senator DILLINGHAM. The record will not show anything definite when you say "here" and "there."

The CHAIRMAN. I am going to put the map in the record.

Mr. BIRCH. That is what we call Copper River Junction, at mile 38.

Senator FRAZIER. How far is that from Cordova?

Mr. BIRCH. Mile 38.

The CHAIRMAN. What is this, running down here to Cape Martin?

Mr. BIRCH. That is a little portion that we built in there.

The CHAIRMAN. I mean this red line.

Mr. BIRCH. That is the proposed line.

Senator DILLINGHAM. But it is not built?

Mr. BIRCH. No, sir. The only part that is built is shown here, indicated in black.

The CHAIRMAN. Is there any other yet built to the coal fields?

Mr. BIRCH. Just this little portion down here which we built out of Katalla.

Senator DILLINGHAM. How many miles is that?

Mr. BIRCH. Six miles.

The CHAIRMAN. Are there any other coal fields except the coal fields in the neighborhood of what is called the Cunningham claims?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Where are they?

Mr. BIRCH. This entire area here [indicating] is coal.

The CHAIRMAN. Well, that is the neighborhood?

Mr. BIRCH. The neighborhood.

The CHAIRMAN. So that the coal fields are in the neighborhood of what is called the "Cunningham claims?"

Mr. BIRCH. That is about the center of the field.

The CHAIRMAN. The Cunningham claims are at the center of the field?

Mr. BIRCH. About the center of the field.

The CHAIRMAN. I want to get the thing located on the map for my own use.

Senator DILLINGHAM. Let me understand. The road is only built now to Copper Junction, as you call it?

Mr. BIRCH. Copper River Junction. No, sir—that is, so far as the coal is concerned; but it is already now built up to mile 102.

Senator DILLINGHAM. Following up the river?

Mr. BIRCH. Yes, sir. Since this map was compiled the road has been completed to here [indicating].

Senator DILLINGHAM. And that point which you are pointing out is named what?

Mr. BIRCH. Tiekel, mile 102.

The CHAIRMAN. And that still leaves how many miles to the Bonanza mine?

Mr. BIRCH. Ninety-seven miles.

The CHAIRMAN. Ninety-seven miles remaining to be built?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. That is now in course of construction?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. You expect to have it completed by November?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Did I understand you to say that you have built 6 miles of railroad from Copper River Junction down to—

Mr. BIRCH. No, sir; we have built 6 miles from Katalla toward the coal fields.

Senator DILLINGHAM. Down to Cape Martin, is it not?

Mr. BIRCH. It is around by Cape Martin. The map shows the portions that are built and the portions that are not built. These red lines indicate surveys.

Senator FRAZIER. I do not remember whether you stated the distance from that point there [indicating]—

Mr. BIRCH. Katalla.

Senator FRAZIER (continuing). To the coal fields.

Mr. BIRCH. That would be about 30 miles.

The CHAIRMAN. May I ask, outside of your property rights under our option in the Cunningham claims in the heart of this coal field here, whether you have any other coal properties there?

Mr. BIRCH. No, sir; we have no interest in any coal properties.

The CHAIRMAN. Where do you get the fuel to operate your road?

Mr. BIRCH. We buy that, at great expense, from Victoria or Vancouver.

The CHAIRMAN. And bring it up by ship? You bring it up by our own ships?

Mr. BIRCH. Yes, sir. It costs us between \$12 and \$14 a ton; and all the coal which we use in the construction of that railroad we have to bring in at enormous expense.

The CHAIRMAN. Have you any smelters, or do you contemplate building any smelters in your copper properties?

Mr. BIRCH. We contemplate eventually building smelters up there when the development is such as to warrant it; but unless there is coal mined in Alaska we will never build any smelters there, because we will not have the coal.

The CHAIRMAN. Exactly. So that it becomes necessary, as a practical business proposition, for you to have coal properties near your railroad to operate it and also to conduct properly your mining operations?

Mr. BIRCH. It is absolutely necessary for the development of that country, for the operation of the railroad, and for the future development of the entire section, to get the Alaska coal.

The CHAIRMAN. You said a moment ago, in answer to one of my questions, that you have not done anything since the option to in anywise develop the Cunningham claims?

Mr. BIRCH. No, sir; we have had nothing to do with the development.

The CHAIRMAN. Or any other claims?

Mr. BIRCH. No, sir; we had nothing to do with it.

The CHAIRMAN. Under your option, of course, you had certain rights. I am merely assuming for the purpose of the question that since the coal was absolutely necessary to both your copper mining and the operation of your railroad, you would necessarily do such things as might be necessary to get your coal properties developed.

Mr. BIRCH. The property was not delivered to us. We merely had an option agreement, and, while we accepted it, the property was never delivered to us, nor have we ever paid over any money. We were perfectly willing to do it, provided these people could make good and deliver their patents, which they never did; and they are now held up.

The CHAIRMAN. Right at that point, to make it clear as we go along: If they were to perfect their patents to-morrow, then your rights under your option which was accepted on December 7 would still be operative?

Mr. BIRCH. I am not prepared to say as to that. That is the question.

The CHAIRMAN. That is the case, is it not, Mr. Steele?

Mr. STEELE. That is what we think and hope. Of course, the agreement must speak for itself as to whether it could be enforced against those gentlemen who did not sign it, and who were not made parties to it. But so far as we are concerned, we are prepared to live up to it.

Senator FRAZIER. The option is still in existence and still in force so far as you are concerned?

Mr. STEELE. So far as we are concerned; yes, sir.

Senator FRAZIER. Under your option agreement with Cunningham & Co., a part of the agreement was that the Guggenheims and Morgan and those interests were to organize a company with a capital stock of \$5,000,000?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. In case the Cunninghams obtained patents for these lands?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. I believe you state that they are to pay Cunningham & Co. \$250,000 for a half interest in those coal lands?

Mr. BIRCH. That was the cash consideration; but in that same agreement we guaranteed transportation.

Senator FRAZIER. Yes.

Mr. BIRCH. That \$250,000 was really to be used as a working capital and used in the development of the coal property.

Senator FRAZIER. Well, under that option the Alaska syndicate acquired a half interest in these coal properties by the payment of \$250,000, did it not?

Mr. BIRCH. Yes; they would, by paying the \$250,000, obtain a half of the stock of the company, which would—

Senator FRAZIER. In other words, the corporation was to be organized with a capital stock of \$5,000,000; the Guggenheim and Morgan interests were to hold half of that stock and the Cunningham interests the other half?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Now, you say the Alaska syndicate has taken no steps and used no influences to help the Cunningham people to perfect their patents since they acquired that option?

Mr. BIRCH. No, sir.

Senator FRAZIER. Have they paid the Cunninghams or the Cunningham interests any part of the price or the agreement as to the amount specified in that option?

Mr. BIRCH. They never paid the Cunningham people any amount. The amount that was paid over to Clarence Cunningham, amounting to \$1,359, was the expenses of Mr. Storrs for examining the property.

The CHAIRMAN. The itemized account, I believe, is already in the record.

Mr. BIRCH. The itemized account which I filed yesterday was for that purpose and that purpose only. It was supplies and labor furnished Mr. Storrs in the examination of the property.

Senator FRAZIER. That payment was made after the option was accepted, was it not?

Mr. BIRCH. Yes, sir. The option provided that we had the right to go upon the property and examine it to see if the coal was there in sufficient quantities to warrant our going ahead and paying them this amount of money.

Senator FRAZIER. What was the report of your expert who was sent there—I believe his name was Mr. Storrs?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. What was his report as to the value of these Cunningham coal properties and as to the character and quantity of the coal?

Mr. BIRCH. He spoke of the quantity of coal—the workable coal—as amounting to in the neighborhood of about fifty millions of tons.

Senator FRAZIER. In the 5,000-acre tract that is embraced in this option?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. What kind of coal?

Mr. BIRCH. That was bituminous coal.

The CHAIRMAN. Is there any anthracite coal there?

Mr. BIRCH. Not in that field.

The CHAIRMAN. Is there in any other field near there?

Mr. BIRCH. There is anthracite coal in that vicinity, but not in the Cunningham coal claims.

The CHAIRMAN. Have you or have you not taken any steps to acquire any of that?

Mr. BIRCH. No, sir.

The CHAIRMAN. Why not?

Mr. BIRCH. We have no particular desire to own any coal lands. We have been approached by a great many of the coal locators in that country. I have personally examined the entire field. I was in there in the spring of 1906; I was there in the fall of 1906; I was there in 1908; and a number of men have come to us with propositions with regard to their coal—those men that have located up there. They have not any money and they want to open it up. But we have never felt justified in going ahead. We could not.

The CHAIRMAN. Just as a general question, Mr. Birch, as a mining engineer, your interests aside, either present or prospective, what do you say the value of that coal field is?

Mr. BIRCH. I should say that there are 500,000,000 tons of workable coal in that field.

The CHAIRMAN. Five hundred million tons of workable coal?

Mr. BIRCH. I should say that.

Mr. STEELE. In the whole field?

Mr. BIRCH. In the entire field.

The CHAIRMAN. To make which available a railroad how long will have to be built?

Mr. BIRCH. Ninety-five miles.

The CHAIRMAN. Reduced to commercial terms, what would you say would be the value of the coal field?

Mr. BIRCH. The large market for that coal will be in the Pacific coast States.

The CHAIRMAN. In Seattle, and San Francisco, and Portland?

Mr. BIRCH. In Seattle and San Francisco and in such States as are near to those cities. That coal will have to be brought down there and enter into competition with the local coal and the coal which is brought over from Australia in foreign hulls—boats that are coming over here empty for wheat, and that would bring over the coal virtually as tonnage. The Alaska coal has got to compete with that and with the British Columbia coal. The quality of this coal is in its favor; but they can not mine and get that coal to the markets in the States at first with any great amount of profit. The coal mining at first up there is going to be difficult and it is going to be expensive, and an individual holder there can not think of mining any property. Now, to begin with, to open up any mining property, particularly coal property, there must be a considerable expenditure of money in machinery and in driving the tunnels and headings. In order to conserve their coal and get the greatest possible tonnage out of a given area, they must go about it in a systematic way. Heretofore in coal mining they have left a number of pillars, a very large percentage, to support the roof. That is done in Pennsylv-

vania. There are billions of tons of coal to-day that are in the ground that will never be mined, due to poor mining. The mines are flooded and caved in, and there is not sufficient economic value there; it costs more to get it out than it is worth. Now coal mining is done on a more systematic basis. They go to the remote parts of their fields and come forward, and as they do that they remove the pillars and let the roof sink; and in that way they get the greatest possible tonnage out of their area. If they have not a sufficient area to begin with, they can not put in the proper machinery and go to the expense of this dead work. In a mining property the amount of money which is expended for development is held up, you might say, in a suspense account, which eventually has got to come out of the property and be distributed over the tonnage produced. If it is a small tonnage that is produced, the cost is that much greater. In other words, the amortization of a small property is greater than in a large property. You gentlemen, I think, catch my point.

The CHAIRMAN. This projected line of 95 miles to the coal fields is projected by the Alaska syndicate?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. That is a part, is it not, of your contemplated system of railway which you are now building?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Have you acquired any rights of way under the general law, or anything of that kind?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Is there any other road contemplated up there?

Mr. BIRCH. There have been other surveys made by other people up there, down to Controller Bay and various places. I think there are several.

The CHAIRMAN. Are you contemplating building this road soon?

Mr. BIRCH. When we are guaranteed some coal, and somebody will give us some coal. As it is now, we can not get any coal. We can not even get coal to use in the construction of our railroad. Nobody has any patents up there, and the Government has refused to issue them.

The CHAIRMAN. It amounts to this then: The person that gets the railroad up there, whether it is you or some other person, would have a very great practical business advantage in acquiring coal properties; of course, because the individual persons, as you say, could not mine it?

Mr. BIRCH. No. Well, I do not think there is any particular advantage in owning any coal lands in Alaska. We do not care about it.

Senator DILLINGHAM. What is the distance from the Victoria coal fields, where you purchase your coal, to Cordova Bay?

Mr. BIRCH. Approximately 1,600 miles.

The CHAIRMAN. Mr. Birch, just one thing. Your very interesting account of coal mining is illuminating. However, the question I asked you, to which that response was made, was this: What would you say this 500,000,000 of tons of workable coal in this coal district would amount to, reduced to financial, commercial terms? What would you say would be the value of it, assuming that you had a railroad built there?

Mr. BIRCH. Possibly \$200,000,000, if you got it all out at once.

Senator DILLINGHAM. That is not what you mean, but what is the present value?

The CHAIRMAN. That is what I mean, exactly.

Senator DILLINGHAM. Not the present value of the coal, but the present value of the property if bought or sold.

Mr. BIRCH. It is worth nothing without transportation; and a market has got to be made for it.

The CHAIRMAN. I understand.

Mr. BIRCH. And it is all a question of supply and demand.

The CHAIRMAN. Of course it has no value without a railroad and some way of getting to the market. I am assuming, of course, that some person will build a railroad. You already have surveyed and acquired rights of way to that coal field?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. In a general way, regardless of your interests or anybody else's interests, assuming a railroad to be built so that it could get to market—the market of which you spoke—what would you say this 500,000,000 tons of workable coal now in sight in this particular coal district would be worth?

Mr. BIRCH. About 50 cents a ton.

The CHAIRMAN. But, as I remember, there was an agreement introduced yesterday which provided that the coal should be sold to the railroad company for its use at \$1.75 a ton.

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And that it should be sold to the Alaska syndicate at \$2.25 a ton.

Mr. STEELE. At the mines?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. At the mines?

Mr. BIRCH. I will explain that.

The CHAIRMAN. That would make a difference of \$200,000,000, you say? At the lower price that would make a difference of about \$300,000,000, and at the higher price of perhaps \$300,000,000 more?

Mr. BIRCH. Senator, I am speaking of net values, and you are speaking of gross values.

The CHAIRMAN. Yes; that is what I am speaking of—gross values.

Mr. BIRCH. Well, in the first place, that coal has no value until it is mined. Now, it is going to cost \$1.75 to mine that coal; so that there would be no profit at that price.

The CHAIRMAN. Speaking then, as you spoke a moment ago, of its net value: That, you say, would be perhaps \$200,000,000?

Mr. BIRCH. Well, probably that—50 cents a ton.

The CHAIRMAN. And its gross value—that is, the amount you would get for it—at \$2.25, would be practically how much?

Mr. BIRCH. Well—

The CHAIRMAN. It would be four and a half times that, would it not?

Mr. BIRCH. Yes; speaking of its gross value.

The CHAIRMAN. That would be \$800,000,000 or \$900,000,000!

Mr. BIRCH. Yes; but it will cost you almost that to get it out.

The CHAIRMAN. Yes: I am dividing the net value and the gross value.

Mr. BIRCH. Yes, sir.

The CHAIRMAN. I understand that. That is to say, of the \$900,000 it would cost you, you say, \$700,000,000 to get it out?

Mr. BIRCH. Yes.

The CHAIRMAN. And \$200,000,000 would remain as the profit?

Mr. BIRCH. Yes.

The CHAIRMAN. So the value is \$900,000,000, all told, of which total of \$900,000,000 the sum of \$200,000,000 is profit?

Mr. BIRCH. About that, I should say.

The CHAIRMAN. That is the whole answer.

Senator FRAZIER. You said, I believe, awhile ago, that you estimated that there were 50,000,000 tons in the tract of land embraced in this option?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Which your Alaska syndicate acquired from Cunningham & Co.

Mr. BIRCH. Yes, sir.

Senator FRAZIER. After your investigation, did you conclude that that is the most valuable part of that coal field?

Mr. BIRCH. No; I would not say that was the most valuable part of it. It is about the center of the field, but there are a great many sections there that are equally as valuable as that.

The CHAIRMAN. Any that are more so?

Mr. BIRCH. Yes; I would say there are larger veins in other parts of the field than the Cunningham veins.

Senator FRAZIER. What is the average thickness of your vein or veins in this 5,000-acre tract on which you have the option?

Mr. BIRCH. Well, they might average 10 or 12 feet. Some of them run up as high as 40 feet; but they roll and pinch, you know, in various places. Some are only 4 feet wide.

Senator FRAZIER. You think they would average 10 or 12 feet?

Mr. BIRCH. Well, that would be the limit. Some of them are pinched out. In the western portion of the field it is very much broken up, and the available coal there is going to be small in proportion to the other in the center of the field.

Senator FRAZIER. Estimating the value of the coal, as I understand you do, in the ground, at 50 cents a ton, that would make this coal field upon which the Alaska Company acquired this option worth how much—\$25,000,000, was it not?

Mr. BIRCH. About that.

Senator FRAZIER. For which your option provides that your company shall pay \$250,000?

Mr. BIRCH. That is one of the conditions; yes.

Senator FRAZIER. Well, that was the price, was it not?

Mr. BIRCH. That was the purchase price.

Senator FRAZIER. Of course you were to build this railroad up here?

Mr. BIRCH. Yes, sir; and find a market.

Senator FRAZIER. And you were to get coal at a reduced price, below the commercial price?

Mr. BIRCH. That was for operating the road.

Senator FRAZIER. You were to get it for \$1.75 for use on your road, were you not?

Mr. BIRCH. That was only for operating the road.

Senator FRAZIER. Only for operating the road; and of course being interested in the coal properties was sufficient inducement for you to build the road up there?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. So that you were really getting what you estimate as property valued at \$25,000,000 for \$250,000?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Then you were very greatly interested, of course, in having these patents of the Cunninghams perfected—or having these entries, rather, perfected into patents?

Mr. BIRCH. Why, naturally we wanted to see them patented. We wanted to see everybody up there get their patents.

Senator FRAZIER. And yet you have not taken any interest or any steps at all to assist Cunningham in getting them?

Mr. BIRCH. We have had interest, but we have never taken any steps to get patents.

Senator FRAZIER. You have never taken any steps?

Mr. BIRCH. No, sir.

The CHAIRMAN. I want to ask Mr. Steele some questions in a moment. I remember that you said yesterday, Mr. Steele, when you were asking that the hearing be made public, that you did so because you had been accused in the press of doing many things that were wrong, etc. I assume that both of you gentlemen referred by that to the statements that have been made before the committee heretofore with reference to your operations and control in Alaska?

Mr. BIRCH. That is one of them.

Mr. STEELE. Yes, sir; that is one of them.

The CHAIRMAN. I do not know whether any member of the committee has specifically asked you about it, but one of the statements made here is this—to use the exact language:

He—

. That is, referring to Major Richardson—
is here in the interest of the Guggenheims, lobbying for them.

What have you to say about that?

Mr. BIRCH. I have this to say—that that is absolutely wrong. Major Richardson is not lobbying here for us, and never was; and we have no lobby here in Washington.

The CHAIRMAN. What relations have you now or have you ever had with Major Richardson?

Mr. BIRCH. Only personal relations. I have known Major Richardson for a number of years. He is a well-known man in Alaska; and all Alaskans get together and talk occasionally. But I never asked Major Richardson to do anything for me; neither has anybody connected with the Alaska syndicate.

The CHAIRMAN. It has been stated here, on the same page, by the delegate from Alaska (Mr. Wickersham):

I want government aid given to railroads in Alaska in the proper way, but I do not propose to see the coal interests in the Territory of Alaska turned over bodily to the Guggenheims if I can prevent it. We are almost in their power now. They have all the fish in Alaska.

Now, I understood you to say, in answer to my questions this morning, that you have a fish industry which turns out 300,000 cases a year?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. As against a total of how many?

Mr. BIRCH. Two million three hundred and fifty-six thousand cases.

The CHAIRMAN. In the remainder of which you have what interest?

Mr. BIRCH. We have absolutely no control and no connection with it at all.

The CHAIRMAN. Mr. Wickersham states:

They have all the railroad and steamboat transportation in Alaska.

I understood you to say this morning that you have the Alaska Steamship Company, operated by the Northwestern Commercial Company?

Mr. BIRCH. No; they operate themselves, but we hold the stock.

The CHAIRMAN. The Northwestern Commercial Company is the holding company?

Mr. BIRCH. Yes, sir. I can tell you the exact percentage that the syndicate actually owns in that transportation company.

The CHAIRMAN. You said 82 per cent, I believe.

Mr. BIRCH. No, sir; the Alaska syndicate only actually has control of 37.9 per cent of the Alaska Steamship Company's stock. That is because of their holding 46 per cent of the stock of the Northwestern Commercial Company, which company holds 82 per cent of the stock of the Alaska Steamship Company.

The CHAIRMAN. In response to my earlier questions this morning, I understood you to say that there are four other steamboat transportation companies which you have already named?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. And in which, in answer to my questions, you said you have no interest whatever?

Mr. BIRCH. No interest whatever.

The CHAIRMAN. Directly or indirectly?

Mr. BIRCH. Directly or indirectly.

The CHAIRMAN. Have you any other railroad interests, directly or indirectly, except as described, the one from Cordova Bay in the direction of your mines?

Mr. BIRCH. No other except the indirect interests which we have in the Northwestern Commercial Company. The Northwestern Commercial Company has an interest in this little Wild Goose Railroad running out of Nome.

The CHAIRMAN. That is how long?

Mr. BIRCH. Oh, it is—I do not know. It has gone into bankruptcy now.

The CHAIRMAN. What other railroads are there in Alaska, if any?

Mr. BIRCH. The Alaska Central Railway, and the—

The CHAIRMAN. How long is that?

Mr. BIRCH. That is, I think, seventy-odd miles, now.

The CHAIRMAN. And your road now is 102 miles long?

Mr. BIRCH. One hundred and two miles.

The CHAIRMAN. Have you any interest in the Alaska Central Railway, directly or indirectly?

Mr. BIRCH. No interest at all.

Senator FRAZIER. Who are the owners of the Alaska Central?

The CHAIRMAN. Yes; who are the owners of the Alaska Central?

Mr. BIRCH. I do not know that. They are in the hands of receivers now.

The CHAIRMAN. What other railroads are there in Alaska?

Mr. BIRCH. That we own?

The CHAIRMAN. No, no. What other railroads are there in Alaska?

Mr. BIRCH. The White Pass and Yukon is in a portion of Alaska.

Senator DILLINGHAM. That is in the Canadian territory.

Mr. BIRCH. A portion of it is in Alaska. Thirty miles of it is in Alaska.

The CHAIRMAN. Do you own, directly or indirectly, any interest in that road?

Mr. BIRCH. No, sir; we have no interest whatever in the White Pass and Yukon Railroad.

The CHAIRMAN. Have you in any other railroad in Alaska?

Mr. BIRCH. No, sir.

The CHAIRMAN. It is stated here:

They—

Referring to the Guggenheims—

have all the railroad and steamboat transportation in Alaska.

That is the reason I ask you these questions.

Mr. BIRCH. Well, there is another railroad in the Tanana Valley, called the Tanana Valley Railway. We have no interest whatever in that.

The CHAIRMAN. Have you any other resources—I have asked you quite carefully about this matter, but I want to know in that way, as well—have you any other resources whatever, directly or indirectly, in Alaska, except those which you have described this morning?

Mr. BIRCH. No, sir.

The CHAIRMAN. I see over here on another page this statement:

Governor Hoggatt, who has been a head lobbyist for Guggenheims down here four or five years, while being paid a salary as governor of the Territory of Alaska, etc.

What is the fact about that?

Mr. BIRCH. I am personally acquainted with Governor Hoggatt; but he has never been in our employ, nor was he ever asked by myself nor anybody connected with the Alaska syndicate to do anything in Washington.

The CHAIRMAN. What is the fact about his being the head or any other kind of a lobbyist for the Guggenheims?

Mr. BIRCH. It is all wrong.

The CHAIRMAN. What have been your relations with him?

Mr. BIRCH. What are our relations?

The CHAIRMAN. If any.

Mr. BIRCH. Only friendly relations; as one Alaskan would meet another.

The CHAIRMAN. And you have the same relations with Major Richardson?

Mr. BIRCH. The same relations with Major Richardson; and with Judge Wickersham.

The CHAIRMAN. What are your relations with Judge Wickersham; or what have they been?

Mr. BIRCH. None except friendly relations. I have known him for quite a while, since he has been in Alaska. No relations exist except friendly relations.

The CHAIRMAN. Has either of these three men ever been in your employ?

Mr. BIRCH. Not in our employ. None of them has ever been.

The CHAIRMAN. Governor Hoggatt, Major Richardson, or Judge Wickersham?

Mr. BIRCH. No, sir.

The CHAIRMAN. Has any of them ever applied to you for employment?

Mr. BIRCH. No, sir.

The CHAIRMAN. Now, I want to ask you another question with reference to the map, Mr. Birch. I am wondering if it would be too much trouble for you this afternoon to take the general map of Alaska showing the whole thing, and mark out the steamship lines, what they are, and where they go to, including the one around St. Michaels. Who is it that owns the river transportation on the Yukon?

Mr. BIRCH. The Northern Commercial Company, the North Yukon Trading and Transportation Company, and Shubach & Hamilton, on the lower Yukon; and the upper Yukon is controlled by the White Pass and Yukon Railway. We have no interest whatever in any of the Yukon transportation lines.

The CHAIRMAN. Have you a list of the persons who are interested in those companies? Could you get that for the committee?

Mr. BIRCH. I think I have stated them.

The CHAIRMAN. You stated the companies, but you did not state those who are interested in the companies.

Mr. BIRCH. I can procure that, I think—the people who are interested in them.

The CHAIRMAN. I would be very much obliged to you if you would do so.

Mr. BIRCH. I think I have that map here now. No; I will mark that [indicating]. That will be better.

The CHAIRMAN. Also show on this general map here all these railroads.

Mr. BIRCH. Yes.

The CHAIRMAN. Where they are and what they are. Please locate them.

Senator FRAZIER. And locate the coal fields and the copper fields.

The CHAIRMAN. Yes; and everything else, on this general map.

Mr. BIRCH. May I send it to you?

The CHAIRMAN. Certainly. The committee would be very much obliged to you if you would.

Mr. BIRCH. I will be very glad to do it.

The CHAIRMAN. So as to show at a glance the whole transportation industry, the canning and fishing industry, and the mining industry.

Senator FRAZIER. Mr. Birch, who were the parties who were interested on the Cunningham side of these coal claims? Who were the 33 men who made those selections and who undertook to give your company the option? Have you their names?

Mr. BIRCH. I have not their names here, but I can procure the names of the 33 locators if you desire them.

Senator FRAZIER. I wish you would.

The CHAIRMAN. Will you procure those and insert them in the hearing?

Senator DILLINGHAM. He says he will.

Mr. BIRCH. I can get that list and send it to you.

Senator FRAZIER. Did your company ever acquire or seek to acquire any interest in what is known as the "Christopher group" of locations in that coal field?

Mr. BIRCH. No, sir. John Rosene had some connection with them, but neither the Alaska syndicate nor the Morgans nor the Guggenheim people ever had any interest whatever. I went up there. When I went into the field Mr. Rosene asked me if I would take a look at the Christopher properties, which I did, as I looked at all the other properties there. I never went into any detailed examination; it would take too much time. But we never had any interest whatever in the Christopher coal claims and never attempted to acquire any.

Senator FRAZIER. What position did Rosene occupy or hold with respect to the Alaska syndicate at that time, or any of the subsidiary companies in which it was interested?

Mr. BIRCH. He was the president of the Northwestern Commercial Company.

Senator FRAZIER. Did he have any interest in this Christopher group?

Mr. BIRCH. I do not know what arrangement he had with Mr. Christopher. I think it was merely in the form of some talk that he might have had with them—an agreement. Mr. Rosene was not very well posted, I think.

Senator FRAZIER. Was there any effort made by Mr. Rosene or the company of which he was president, or any of these other companies or officers or agents of any of these other companies in which the Alaska syndicate is interested, to acquire that Christopher group of properties?

Mr. BIRCH. No, sir.

Senator FRAZIER. Were any propositions made?

Mr. BIRCH. No, sir.

Senator FRAZIER. And nobody who is interested in any of these companies, except Mr. Rosene, as far as you know, has any interest in the Christopher group?

Mr. BIRCH. None that I know of; and no one that had any authority to do any business for the Alaska syndicate or the Morgans or the Guggenheim people ever attempted to acquire any coal lands in Alaska.

The CHAIRMAN. I would like to ask you a question right there.

Mr. BIRCH. Yes, sir.

The CHAIRMAN. I asked you a moment ago what was the comparative value of the copper properties which you own, compared with others in Alaska. What do you say is the comparative value of this coal field, of which the Cunningham group is the heart, compared with the value of other coal fields of which you know in Alaska? You say this would be gross \$900,000,000 and net \$200,000,000; that is to say, \$200,000,000 profit after the work had all been done. What is the value of the remainder of the coal fields, as far as you know, in Alaska, or are there any?

Mr. BIRCH. That is going into great big figures.

The CHAIRMAN. Where are the other coal fields?

Mr. BIRCH. There are the Matanuska coal fields.

The CHAIRMAN. Where would those coal fields be?

Mr. BIRCH. It shows on that map [indicating].

The CHAIRMAN. How far are they away from the coal fields of which the Cunningham group is the center?

Mr. BIRCH. How large is that area?

The CHAIRMAN. No, no; how far away is it from the other coal field? Where is the other coal field?

Mr. BIRCH. The other coal field, if you will take the general map, is a great many miles from there, over in the Cook Inlet country, there [indicating]. That is the Matanuska coal field.

The CHAIRMAN. It is near Matanuska?

Mr. BIRCH. Near Matanuska. The other coal field is away down here [indicating].

Senator DILLINGHAM. Name it.

Mr. BIRCH. The Bering River coal fields—Controller Bay.

The CHAIRMAN. That is the one we have been talking about, of which the Cunningham group is the heart?

Mr. BIRCH. No. The Bering River coal fields are the coal fields which we have under consideration, and the Cunningham group is a portion of the Bering River coal fields.

The CHAIRMAN. Certainly.

Mr. BIRCH. But the Matanuska coal field has no connection whatever.

The CHAIRMAN. I understand that. What I am driving at is this: You have investigated these coal fields, called the Bering Sea coal fields—

Mr. BIRCH. The Bering River coal fields.

The CHAIRMAN. The Bering River coal fields. Have the coal fields up at Cooks Inlet been investigated so that their value is known?

Mr. BIRCH. Not by our people.

The CHAIRMAN. By anybody?

Mr. BIRCH. Oh, yes; people connected with the Alaska Central Railway.

The CHAIRMAN. Who are those people?

Mr. BIRCH. Canadian people. I do not know just who they are. The president of the road originally was named Frost.

The CHAIRMAN. The road Mr. Balaine promoted?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Did they acquire any claims in the Matanuska coal fields?

Mr. BIRCH. I can not say.

The CHAIRMAN. Have you any idea as to the value of those coal fields?

Mr. BIRCH. Only from talk with a Geological-Survey Man, and one of the experts who went up in that country. I met him once.

The CHAIRMAN. From all your sources of information they are equally as good as the other coal field?

Mr. BIRCH. Equally as good as the other coal field.

The CHAIRMAN. And equally as valuable?

Mr. BIRCH. Equally as valuable.

The CHAIRMAN. And equally as extensive?

Mr. BIRCH. I should say so.

The CHAIRMAN. So that we have in the Bering River coal fields \$900,000,000 worth gross of coal, and there are in the Matanuska fields \$900,000,000 worth gross?

Mr. BIRCH. I should say that.

The CHAIRMAN. One billion eight hundred million dollars' worth.

Mr. BIRCH. In addition to that there are other areas.

The CHAIRMAN. Where are they?

Mr. BIRCH. In the interior.

The CHAIRMAN. When you come to arrange the map for the committee, which you have kindly consented to do, will you also point out and name these various coal fields?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Is there any method by which the Matanuska coal fields can get to the market?

Mr. BIRCH. Only by building a railroad.

The CHAIRMAN. The Alaska Central does not go to them?

Mr. BIRCH. It has not been completed—it is projected, but not completed.

The CHAIRMAN. How far is it from them?

Mr. BIRCH. One hundred and twenty miles from the field, I should say.

The CHAIRMAN. One hundred and twenty miles from the field?

Mr. BIRCH. They have constructed, I think, about 70 miles. I may be wrong. That may not be the exact figure.

The CHAIRMAN. It is about 120 miles from the field to the seaboard?

Mr. BIRCH. One hundred and ninety miles.

The CHAIRMAN. And they have constructed about 70 miles?

Mr. BIRCH. They have constructed about 70 miles.

The CHAIRMAN. And the road is now in the hands of a receiver?

Mr. BIRCH. I understand so.

The CHAIRMAN. What keeps the road up? What does it do? What does it transport?

Mr. BIRCH. I do not think it has anything.

The CHAIRMAN. Is it running at all? Are the engines or the cars moving?

Mr. BIRCH. They may be doing a little business, taking in some prospectors.

The CHAIRMAN. Is it paying its operating expenses?

Mr. BIRCH. I do not know anything about the operation of it at all.

The CHAIRMAN. If it is doing practically no business, and is in the hands of a receiver, it could be bought for a small amount by any persons who had the capital to build the road to the Matanuska coal fields, could it not?

Mr. BIRCH. Yes, if they cared to.

The CHAIRMAN. That is what I mean. They would not do it unless they did care to.

Senator FRAZIER. Do you know of any other copper properties in Alaska than those to which your road is projected?

Mr. BIRCH. Oh, my; yes.

Senator FRAZIER. Where are they located and what is the extent and value of them?

Mr. BIRCH. They are located over a very large area. The known copper properties—that is, the copper properties known to me—I have indicated on this map, which shows all of Alaska, and which I will be very glad to file with the committee.

Senator FRAZIER. Thank you.

Mr. BIRCH. It also gives the names of the various properties.

The CHAIRMAN. There is more on it, then, than there is on the first map, which shows particularly the Kennecott Mines Company?

Mr. BIRCH. Yes.

The CHAIRMAN. And the associated mines?

Mr. BIRCH. Yes, sir; the mines in the immediate vicinity.

The CHAIRMAN. Will you kindly point out on this map where the Kennecott mines and the mines in the vicinity are located—the copper properties?

Mr. BIRCH. The Kennecott mines are indicated by the “No. 1” shown on the map.

The CHAIRMAN. That will make it clear—“No. 1” shown on the map.

Mr. BIRCH. Yes; see [indicating]. The others are owned by other parties over which we have no control.

Senator FRAZIER. How are they designated on the map?

Mr. BIRCH. By numbers and red dots.

The CHAIRMAN. The numbers correspond with the names on the margin of the map?

Mr. BIRCH. Yes.

The CHAIRMAN. There are numbers and names?

Mr. BIRCH. Yes.

The CHAIRMAN. That will be very easy for the committee and for the Senate to locate.

Mr. BIRCH. May I have this back afterwards?

The CHAIRMAN. Certainly.

Mr. BIRCH. This is the only one I have.

The CHAIRMAN. It is very kind of you to let us have it.

Senator FRAZIER. How do the copper fields other than those in the vicinity of—what is the name of it?

Mr. BIRCH. The Kennecott Company.

Senator FRAZIER. How do the copper fields other than those in the vicinity of the Kennecott Company compare in extent and value with that field there [indicating]?

Mr. BIRCH. Do you mean taking them individually or as a whole?

Senator FRAZIER. As a whole.

Mr. BIRCH. The Kennecott holdings are a very small portion, both as to value and acreage, as compared with the holdings of other parties.

Senator FRAZIER. You mean other parties in the immediate vicinity?

Mr. BIRCH. All over Alaska, or even in the immediate vicinity.

Senator FRAZIER. Have you examined other copper properties than those in the vicinity of Kennecott?

Mr. BIRCH. I have personal knowledge of almost all of the properties as indicated on this map.

Senator FRAZIER. Are there very rich deposits of copper in other places than in that vicinity?

Mr. BIRCH. Some of these copper properties indicated on the map are now producing copper.

Senator FRAZIER. Which properties do you refer to? Where are they located?

Mr. BIRCH. There is the Ellamar Mining Company.

Senator FRAZIER. Where is that located?

Mr. BIRCH. That is in Prince William Sound. The Standard Alaska Copper Company have been shipping copper.

Senator FRAZIER. Where is that located?

Mr. BIRCH. In Landlocked Bay. It is in the vicinity of the Ellamar property; and the Big Bonanza property, owned by A. K. Beitson; and others located on the Latouche Island. That is the largest property on the coast, and they are now producing and shipping their ore to Tacoma.

Senator FRAZIER. Do their properties embrace practically all of the copper-bearing lands in the vicinity in which they are located?

Mr. BIRCH. No, sir; they are a very small portion. They are the only ones that are now shipping.

Senator FRAZIER. Have the other copper lands been taken up by individual location—location by individuals—or acquired by corporations or companies, so that they have gone out of the ownership of the United States Government?

Mr. BIRCH. That I can not say; but I assume that all of the known locations, known outcroppings, have been located upon. But as to saying that all of the copper properties in Alaska are now held by individuals, I would say that they are not.

Senator FRAZIER. Individuals or corporations?

Mr. BIRCH. They are not owned by corporations or individuals.

Senator FRAZIER. In other words, there may be other copper properties there; but so far as they are known and have been developed, so as to ascertain their value, they have been taken up?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Who owns the Treadwell mine?

Mr. BIRCH. D. O. Mills is very largely interested in it.

The CHAIRMAN. What does it mine?

Mr. BIRCH. Gold.

The CHAIRMAN. It has a large standing?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. Are you, or not, interested in any of the gold mining properties in Nome or elsewhere?

Mr. BIRCH. No, sir; the Alaska syndicate has no interest whatever.

The CHAIRMAN. Nor are you interested in the Alaska Central development from Seward toward the Matanuska coal field, which you say is as valuable as the Bering River coal fields?

Mr. BIRCH. That is my judgment.

The CHAIRMAN. Who financed the Alaska Central before it went into the hands of the receiver?

Mr. BIRCH. I am told that it was done by Canadian capital.

The CHAIRMAN. What was the bank? Do you know that, Mr. Steele?

Mr. STEELE. I do not know anything about that road, except that it is there.

The CHAIRMAN. I have heard that it was the Sovereign Bank of Canada.

Mr. BIRCH. I do not know anything about the Alaska Central financing. I met Mr. Frost, and once met some brokers who are connected with that.

The CHAIRMAN. Do you know, or do you not know, Mr. Steele, what financial institution in Canada financed the original building of the Alaska Central, until it went into the hands of the receiver?

Mr. STEELE. I have no information about it at all.

Mr. BIRCH. No, sir.

The CHAIRMAN. You do not know whether either the Guggenheims or Messrs. Morgan & Co. were interested in any financial institution that was backing that road?

Mr. BIRCH. I do not know.

Mr. STEELE. I know certainly about the Guggenheims. About the Morgans I do not know.

The CHAIRMAN. I understand, in conference with Senator Dillingham, that since it went into the hands of the receiver, the receiver has built about 2 miles.

Senator DILLINGHAM. Oh, a little more than that. I do not know how much.

The CHAIRMAN. Well, 2 or 3 miles.

Senator DILLINGHAM. Nineteen or 20 miles.

The CHAIRMAN. Well, whatever it is. It is now at a standstill, however, is it not?

Mr. BIRCH. I believe so. I have never been over there.

The CHAIRMAN. The state of the road is that it is a road which has nothing to support it unless capital is put into it, so that it can be built to the coal fields.

Mr. BIRCH. I should say it was a "dead one."

The CHAIRMAN. Until it is built to the coal fields?

Mr. BIRCH. Yes.

The CHAIRMAN. In which event, of course, it would be as valuable as the 95 miles of road built by you?

Mr. BIRCH. No, sir.

The CHAIRMAN. Why not?

Mr. BIRCH. Because it goes 190 miles over two adverse grades. The operation of the road would be very much heavier than this other road, and so far as competing that road against our road is concerned, there is no comparison. They have more than double the distance, with two very heavy grades—two 5 per cent grades—to go over.

The CHAIRMAN. What is your grade of this 95 miles?

Mr. BIRCH. The heaviest grade is three-tenths of 1 per cent.

The CHAIRMAN. What is the name of this place [indicating]?

Mr. BIRCH. Cordova.

The CHAIRMAN. It is only 95 miles from Cordova across to the Bering River coal fields?

Mr. BIRCH. Yes. This is a very large map.

The CHAIRMAN. And there is no grade on the seacoast?

Mr. BIRCH. Practically none; three-tenths of 1 per cent.

The CHAIRMAN. Very easy construction?

Mr. BIRCH. Yes.

The CHAIRMAN. As a matter of fact, as soon as the Cunningham claims are patented so that you could go ahead under the option which you have accepted, you would complete this road?

Mr. BIRCH. Yes, sir; or anybody else who would give something to haul.

Mr. STEELE. I would like to say that as soon as anybody else gets title to the coal lands there and is ready to develop the mine, we will build the road.

The CHAIRMAN. I think that is all I want to ask you, Mr. Birch, but I would like to ask Mr. Steele a few questions.

Mr. STEELE. I would like to ask one or two questions, to get things straight.

Will you please state whether or not the Alaska syndicate or those in charge of it prior to the option agreement of July 20, 1907, had ever heard that there was any charge or question of illegality or fraud in the entries of Mr. Cunningham or his associates?

Mr. BIRCH. No, sir.

Mr. STEELE. I would like to read one extract from the letter of Judge Lindley, a copy of which was filed with the committee yesterday.

The CHAIRMAN. Is it already in the hearings, then?

Mr. STEELE. Yes, sir.

The CHAIRMAN. Very well.

Mr. STEELE. I want to read just one thing:

I have always understood that the first time the Guggenheim interests had anything to do with Cunningham was after all of the coal locations had passed to entry. When you and I met at Salt Lake neither of us knew anything about Cunningham's arrangements with his associates except such as arose after entry, and the appointment of the committee which met us at Salt Lake. After entry they had a right under the then state of the law, to consolidate, or do anything they pleased, assuming that their entries were regular and free from collusion.

We certainly had a right to assume that the entries with which we were dealing were regular and free from fraud.

Senator FRAZIER. Who signed the letter?

Mr. STEELE. Judge Lindley. I want to read one more extract from it:

Upon the face of these papers, and with no knowledge of the existence of any facts which would in any way tend to invalidate these certificates, you and Mr. Guggenheim had a perfect right to deal with the Cunningham entrymen, and they with you. The contract, as drawn, under this state of facts, was in violation of no law, and was not contrary to either public policy or private morals.

Who was Judge Lindley? Do you know of him?

Mr. BIRCH. Yes; he was a very prominent lawyer in San Francisco, and a very able man. He is the author of Lindley on Mines.

Mr. STEELE. Lindley on Mines?

Mr. BIRCH. Lindley on Mines.

The CHAIRMAN. A mining lawyer?

Mr. BIRCH. Yes, sir.

Mr. STEELE. In addition to that, he was more than a mining lawyer?

Mr. BIRCH. Yes, sir.

The CHAIRMAN. I mean, he was sufficiently familiar with mining law to be the author of a book on that subject.

Mr. BIRCH. He is an authority on mining law, and on the obtaining of titles, I should say, to mining property from the Government. He has practiced a good deal before the Land Department.

Mr. STEELE. The Alaska syndicate acquired a 40 per cent interest in the Kennecott Mines Company in November, 1906?

Mr. BIRCH. Yes, sir.

Mr. STEELE. And it acquired the remaining 60 per cent in April, 1909?

Mr. BIRCH. Yes, sir.

Mr. STEELE. Who managed and controlled that company between those two dates?

Mr. BIRCH. I did.

Mr. STEELE. What I am asking—

Mr. BIRCH. I managed it.

Mr. STEELE. I will put it in another way. Who controlled that company between those dates? Was it controlled in any way by the Alaska syndicate, or controlled by the holders of the 60 per cent of the stock?

Mr. BIRCH. It was controlled by the holders of the 60 per cent of the stock.

The CHAIRMAN. Who were they?

Mr. BIRCH. Norman Schultz—

The CHAIRMAN. Oh, yes; you gave that before.

Mr. BIRCH. And associates.

The CHAIRMAN. You gave that before.

Mr. BIRCH. Yes.

Mr. STEELE. When were these claims located, about which Senator Frazier asked you? Was that prior to April, 1909, when the syndicate acquired the full stock of this company?

Mr. BIRCH. Yes, sir.

Mr. STEELE. So that, at the time those claims were located, the syndicate had nothing to do with it?

Mr. BIRCH. No, sir.

Mr. STEELE. It has been suggested that if this Copper River and Northwestern Railroad were the only road running up the Copper River to the copper mines it would be in a very strong position regarding the acquisition of other interests in copper mining, or in coal lands.

The CHAIRMAN. And in the building of another railroad. That was my suggestion.

Mr. STEELE. Well, I just want to bring this point out clearly, if you please. The railroads in Alaska are subject, as to the rates, either to the jurisdiction of the Secretary of the Interior or of the Interstate Commerce Commission, are they not?

Mr. BIRCH. Yes, sir.

Senator FRAZIER. Right there, is it not a fact that one of your transportation companies has been contesting that proposition and insisting before the courts that the interstate-commerce law did not apply to Alaska, because of the fact that it was not a Territory, but a district only?

Mr. STEELE. Will you let me answer that?

Senator FRAZIER. Let him answer it.

Mr. STEELE. I do not know whether he knows about it.

Mr. BIRCH. I will refer that to Mr. Steele, because if anybody had one it, it would be Mr. Steele.

Senator FRAZIER. You do not know yourself, then, as to whether that is true or not?

Mr. BIRCH. No, sir.

The CHAIRMAN. That is pending now, is it not?

Mr. STEELE. Yes, sir; it is pending now.

Mr. BIRCH. Mr. Steele can answer that.

Senator FRAZIER. You did not take that position?

Mr. STEELE. No, sir; that was not our position. I have a brief here to show what our position was.

Senator FRAZIER. What was your position?

Mr. STEELE. There never was any question in our minds as to the interstate-commerce law applying to Alaska. The only question was as to who had jurisdiction over the railroads—whether the Secretary of the Interior still had jurisdiction under the act originally vesting him with that jurisdiction, or whether that act was repealed by implication by the Hepburn law, so that the jurisdiction over Alaska was vested in the Interstate Commerce Commission.

Senator FRAZIER. You were insisting that jurisdiction did not vest in the Interstate Commerce Commission, were you not?

Mr. STEELE. No; our view of the law was—and here is a brief filed by counsel, Messrs. Burdett, Thompson & Law—

The CHAIRMAN. Your position was that it had been vested in the Secretary of the Interior, instead of in the Interstate Commerce Commission?

Mr. STEELE. That it had been placed with the Secretary of the Interior and had never been taken away from him.

Senator FRAZIER. That is, that the interstate-commerce law did not apply to Alaska?

Mr. STEELE. No, sir; the interstate-commerce law does apply to Alaska; but that the jurisdiction over rates, schedules, and tariffs is vested in the Secretary of the Interior, or in the Interior Department, and not in the Interstate Commerce Commission.

The CHAIRMAN. Will you let me ask you a question right there?

Mr. STEELE. Yes, sir.

The CHAIRMAN. If you admit that the interstate-commerce law applies to Alaska, what possible difference would it make to you whether the jurisdiction over the rates under the law was in the Interior Department or in the Interstate Commerce Commission, or any place else? They would all execute the law alike, would they not?

Mr. STEELE. Undoubtedly.

The CHAIRMAN. Then what was the point?

Mr. STEELE. I am coming to that.

The CHAIRMAN. Oh, I beg your pardon.

Mr. STEELE. There is no difference at all, except that when the jurisdiction is with the Secretary of the Interior you can get much speedier action regarding a change in rates, a change in tariffs, than when it remains with the Interstate Commerce Commission. That is the only thing I know of. The time within which you can put a change of rates into effect is very much shorter under the law with regard to the Secretary of the Interior having jurisdiction than when it has to be filed with the Interstate Commerce Commission, with thirty days' notice.

Senator FRAZIER. Would you object to filing one of the briefs upon that point?

Mr. STEELE. I brought it for that purpose. This is the brief filed by Messrs. Burdette, Thompson & Law in the case of the Humboldt

Steamship Company v. The White Pass and Yukon Route before the Interstate Commerce Commission. Then the Interstate Commerce Commission called upon our railroad, the Copper River and Northwestern, to file its tariffs and schedule of rates. We filed the schedule of rates with the Interstate Commerce Commission, as well as with the Secretary of the Interior, but with the return made to the Interstate Commerce Commission there was a note suggesting that the proper jurisdiction was with the Secretary of the Interior and not with the Interstate Commerce Commission and that the return was made simply for the purpose of complying with the request of the Interstate Commerce Commission.

(The brief above referred to is filed with the committee.)

The CHAIRMAN. Then, boiled down, it came, practically, to the question of where you could get the speediest action?

Mr. STEELE. Practically; yes, sir.

The CHAIRMAN. That being true, could you not have gotten much speedier action by simply admitting the jurisdiction of the Interstate Commerce Commission rather than to have this legal contest?

Mr. STEELE. There is really no action required by us. Our road is not being operated except for the transportation of our own material, and I think they take some people in, but they take them in free.

The CHAIRMAN. If that is true, and it is not being operated, the question of rates not applying, what did it matter to you?

Mr. STEELE. It only mattered in this way—that the question might be settled.

The CHAIRMAN. For the future?

Mr. STEELE. So that we would know in the future to whom we had to go.

The CHAIRMAN. I see.

Mr. STEELE. Mr. Birch, I want to ask you simply one question regarding the Northwestern Fisheries Company. Did you or Mr. Eccles or myself, being in charge of the affairs of the Alaska syndicate in New York, have anything to do with the Northwestern Fisheries Company in the way of the management or control?

Mr. BIRCH. No, sir.

Mr. STEELE. Did you know anything about the repeal of the law of which Senator Beveridge has spoken, regarding the tax on the fish?

Mr. BIRCH. No, sir; I know nothing about it.

Mr. STEELE. Did you have anything to do, or did any of the members of the Alaska syndicate have anything to do, with the repeal of that law?

Mr. BIRCH. No, sir.

Mr. STEELE. I believe that is all.

The CHAIRMAN. I want to ask Mr. Steele some questions.

Mr. STEELE. May I say one word?

The CHAIRMAN. Anything you wish.

Mr. STEELE. Only one word, in regard to this option agreement. When this option agreement came on to New York it was examined by Mr. Francis Lynde Stetson and by me, so that we could advise the Alaska syndicate whether or not there was anything contrary to either the letter or the spirit of the law.

The CHAIRMAN. You representing the Guggenheims and Mr. Stetson representing the Morgans?

Mr. STEELE. Yes, sir; I may say that on any important legal question that comes up regarding the operations of the Alaska syndicate I always confer with Mr. Stetson. If the questions are not important or are very clear ones I do not. But this I considered a most important question, because the Alaska syndicate have been most anxious from the start to avoid anything which could possibly be construed as a violation of any law or statute. This agreement recites that "The title to these lands rests in final United States receiver's certificate of entry, issued one to each of said 33 persons, and the papers in application for patent are now before the Commissioner of the General Land Office for his action thereon."

The CHAIRMAN. All of those are now a part of the record?

Mr. STEELE. Yes, sir.

The CHAIRMAN. If you have any other papers that are a part of this record, the committee would be very glad to have you, and, indeed, would expect you, to file them as part of the hearing.

Mr. STEELE. That was filed yesterday.

The CHAIRMAN. All right.

Mr. STEELE. We had heard nothing whatever about any question of fraud or illegality in regard to these claims. We passed upon them simply upon the condition of the record title as set out in this agreement, that they had passed to final entry—in that state of facts—under the decisions which I referred to yesterday, the case of *Myers v. Croft* (13 Wall.), *United States v. Detroit Lumber Company* (200 U. S.), and *United States v. Clark* (200 U. S.). The Supreme Court has decided flatly that after the claims have passed to final entry, then the entryman may deal with them. The purchaser, however, of a claim before it has been patented is still liable to have that claim defeated at the suit of the Government for fraud or illegality in the location or in the entry. He is not in the same position as a bona fide purchaser after patents have been issued. Of course, under those decisions, after the patent has been issued and the property is bought by a bona fide purchaser for value, he gets a good title. The agreement provided that the corporation was to be formed, and, while it does not state in so many words who was to form it, it was to be formed by those gentlemen who had control of the patents. It was their property. They were to form the corporation and convey the patented property to that corporation; and it was not until that had been done, and until we had examined the titles to the property and satisfied ourselves that they were good, that we would be called upon to pay any money. In the early winter, I think, of 1908—I do not know the exact time—questions regarding the legality of the entries involved in this agreement arose. We stopped immediately. There was nothing for us to do until the entries had gone to patent and the patented properties had been conveyed to the company. Until that time we were not called upon to pay any money, and we had no interest of any kind, sort, or description in the property; and as soon as these questions arose about there being fraud or illegality in these titles, we had nothing more to do with it, and have not had from that day to this.

The CHAIRMAN. Mr. Steele, on that point I would like to ask you just two or three questions, which perhaps you can answer. I put some of them to Mr. Birch this morning. The option was taken up

on December 7, 1907, by the telegram of Daniel Guggenheim, was it not?

Mr. STEELE. It was.

The CHAIRMAN. He represented the interests of which you have spoken—of Messrs. Guggenheim and J. P. Morgan & Co.

Mr. STEELE. He was acting for the Alaska syndicate.

The CHAIRMAN. He was acting for the Alaska syndicate?

Mr. STEELE. Yes.

The CHAIRMAN. And this telegram was an acceptance of the option by the Alaska syndicate?

Mr. STEELE. It was an acceptance of the option by the Alaska syndicate.

The CHAIRMAN. And so that closed the option, so far as that could be closed.

Mr. STEELE. Yes.

The CHAIRMAN. I notice on the telegram this: "Charge M. G. Sons, Alaska syndicate;" so that fixes it?

Mr. STEELE. Yes.

The CHAIRMAN. There is no question about that?

Mr. STEELE. No, sir; none at all.

The CHAIRMAN. So that to-day any rights that accrue or may accrue to the Alaska syndicate under this option thus taken up on December 7, 1907, still may be exercised as soon as the lands are patented?

Mr. STEELE. That is our view.

The CHAIRMAN. Well, nobody else has any other view. Does anybody else hold any other view?

Mr. STEELE. I do not know. I have seen statements in the newspapers—I do not know whether they are true or not—as coming from some of these claimants, that since the railroad was not built at Katalla, or built to Katalla, I should say, and Katalla made the terminus of the road, they considered that agreement void.

The CHAIRMAN. You spoke yesterday—and I am only speaking from memory—about the majority of these claimants having met. Who constitute the original entrymen of the Cunningham group?

Mr. STEELE. I was reading from the option agreement. That is all I know about that.

The CHAIRMAN. I am assuming that that is true, and that substantially all of the Cunningham group was included in the option. It has already been testified that nothing was done subsequently by you to perfect the patents.

Mr. STEELE. Not a thing.

Mr. BIRCH. No, sir.

The CHAIRMAN. And of course nothing has been done to develop the lands. I want to ask you, Mr. Steele, although I have been asking Mr. Birch, this question: Do you know or have you heard of any other properties in coal and copper, in Alaska, other than those presented here this morning in these maps, in which the interests you represent, the Messrs. Guggenheim and Morgan Co., are interested?

Mr. STEELE. They have no interest of any sort or any description in any properties at all except the Kennicott Mines Company, and the interest which they may have in these coal lands, under that option agreement.

The CHAIRMAN. They have no interest in any estates or firms holding any properties?

Mr. STEELE. None of any description.

The CHAIRMAN. Do you know of any firms or estates holding property there yourself?

Mr. STEELE. In which the Alaska syndicate is interested?

The CHAIRMAN. No, sir; outside of that.

Mr. STEELE. I have no familiarity with that; no, sir.

Senator FRAZIER. I would like to ask Mr. Steele one question.

The CHAIRMAN. Certainly.

Senator FRAZIER. Was there ever any investigation made by the Guggenheims or anybody representing them as to the legality of the Cunningham entries before this option was signed?

Mr. STEELE. As I understand; no.

Senator FRAZIER. Do you mean to say that those gentlemen signed an option of that kind and obligated themselves to pay \$250,000 and to build a railroad and to pay the expenses of the investigation of the properties without ever making any investigation whatever as to whether the entries or locations were bona fide or not?

Mr. STEELE. The situation was simply this: We did not obligate ourselves to do anything. It was an option given, and it was taken upon the statement made that their claims had passed to final entry. Before any payment would have been made, after patents had been issued, we would have examined the titles; but we were not called upon to pay anything or to do anything except to send our own expert up there to make an examination of the property, to see whether there was coal there, and its character. We were not called upon to do anything at all until after the patent should have issued and it should have been conveyed to this company.

Senator FRAZIER. So that you did not, as a matter of fact, make any investigation at all?

Mr. STEELE. No; none at all.

Senator FRAZIER. You took Mr. Cunningham's word as to the entries and the word of thirty-three odd people on 33 tracts of land?

Mr. STEELE. We took the statement as set out in the option agreement.

Senator FRAZIER. And upon that the Alaska syndicate advanced thirteen hundred and some odd dollars to make a preliminary investigation of the coal on the properties?

Mr. STEELE. It cost more than that. That was simply a portion of Mr. Storrs's expenses—for groceries and supplies which he bought from Cunningham.

Senator FRAZIER. What did you pay Storrs?

Mr. STEELE. I do not know what his fee was.

Senator FRAZIER. Was it paid by the Alaska syndicate?

Mr. STEELE. It was paid by the Alaska syndicate; yes, sir.

Senator FRAZIER. Do you know anything about what it was?

Mr. STEELE. I do not.

Senator FRAZIER. Does Mr. Birch know?

Mr. BIRCH. I would say \$2,500 to \$3,000; possibly more.

Senator FRAZIER. Did you pay anybody else fees or expenses in connection with that.

Mr. BIRCH. Only Mr. Storrs and his assistant, Mr. —, well, I forget his name; just an assistant to help him measure up.

Senator FRAZIER. How much did you pay him?

The CHAIRMAN. Was he the person about whom you gave the itemized accounts?

Mr. BIRCH. Oh, no; if you desire it, I will produce exactly the amount that we paid for these men to go and examine the property. It is an everyday occurrence with us. We employ men to go and look at properties.

Mr. STEELE. I can say this, Senator: We considered Mr. Storrs a competent man, and whatever bill he rendered was paid.

Senator FRAZIER. I was not speaking of bills, but fees that you paid to Mr. Storrs and his assistant, and others, outside of the itemized account of expenses.

Mr. STEELE. I am speaking of fees.

Mr. BIRCH. If it is your desire, I will furnish the exact amount.

Senator FRAZIER. I should like to have it: The committee would like to have the total amount, showing what expenditures the Alaska syndicate has made with respect to these Cunningham entries, including the itemized account of expenses which you have already filed, any fees paid to Mr. Storrs or his assistants, or any attorneys' fees paid to any attorneys, or to any one else, with respect to these lands.

Mr. BIRCH. You do not mean, for instance, my expenses, of getting in there and looking over the field in general, do you?

Senator FRAZIER. Did you go and make an examination of the Cunningham entries?

Mr. BIRCH. Not of the entries, but I went over the property.

Mr. STEELE. The whole field?

Mr. BIRCH. The whole field, in general, before Storrs was there and recommended that a man go there and make a detailed examination?

Senator FRAZIER. Yes; I should like to have your fees, as well as those of everybody else connected with it. I want to know how much the Alaska syndicate have spent on this inchoate proposition that they have of buying these 5,000 acres of land from Cunningham and 33 other gentlemen.

Senator HUGHES. You referred, Mr. Steele, to a brief that you filed—

Mr. STEELE. That was the brief of Burdett, Thompson & Law.

Senator HUGHES. It was filed by the company of which you are the managing director and one of the three who run it to the exclusion of the owners, so I think I may say, by you. In the brief itself, however, you refer to the brief of Messrs. F. C. Elliott and Messrs. Davies, Stone & Auerbach, representing other interests before the commission. Have you a copy of that?

Mr. STEELE. I have not. I am free to say, Senator, and I say it with great respect for those gentlemen, that I took no stock at all in their view that because Alaska was sometimes called a territory and sometimes a district that therefore the interstate-commerce law did not apply to it.

Senator HUGHES. But they represented the same people you did and urged that.

Mr. STEELE. No, sir; not at all.

Senator HUGHES. These people, Messrs.—what is the name? I do not find it here.

Mr. STEELE. Davies, Stone & Auerbach.

Senator HUGHES. No; Burdett, Thompson & Law.

Mr. STEELE. That was the brief on behalf of the Copper River and Northwestern Railway Company, which is our own company.

Senator HUGHES. And in that they referred to the brief of Messrs. Davies, Stone & Auerbach—

Mr. STEELE. Yes.

Senator HUGHES. As to the contention that the interstate-commerce law was not applicable, so far as the jurisdiction of the Interstate Commerce Commission was concerned, because the act did not refer to a district, but referred to Territories and States. I wanted to get a copy of the other brief, which they say renders it unnecessary for them to further discuss the question.

Mr. STEELE. That brief was filed in behalf of the Tanana Valley Railroad, a road with which we have no connection at all.

Senator HUGHES. I understand that; but your counsel in this brief say:

In the present consideration of this question argument in support of the contention that Alaska is not a "Territory" of the United States, but is, instead, a "district," as those terms are understood in legislation in regard to those portions of the United States under the general control of Congress which have not yet been erected into a sovereign State of the Union, will be omitted by us.

The contention that Alaska is not a "Territory," within the meaning of that term as used in the interstate-commerce laws, has been sufficiently dealt with in the briefs of Mr. F. C. Elliott and Messrs. Davies, Stone & Auerbach, representing other interests, already before the commission in this case.

And then they take up their line of argument.

Mr. STEELE. I think that was a polite way our counsel had of not resting their argument at all upon the position taken in those briefs. Our view was that the only question was whether or not the Secretary of the Interior had jurisdiction under the act conferring it or whether that had been taken away by the Hepburn Act.

Senator HUGHES. They said that it was sufficiently argued by the attorneys of the other people.

Mr. STEELE. Yes, sir.

Senator HUGHES. I would like to inquire, Mr. Steele, in order to get at the real situation, whether there were negotiations; and if so, by whom, prior to the time of the meeting in Salt Lake at which this option agreement was drawn up?

Mr. STEELE. None whatever.

Senator HUGHES. How did it happen that Judge Lindley should be on hand to draw it and Mr. Eccles to meet these 33 people like that in Salt Lake, where none of them lived, except Mr. Eccles, probably?

Mr. STEELE. That was a mistake in the testimony of Mr. Birch, I think, given at the hearing yesterday or probably this morning, that Mr. Eccles was in the West, and that these gentlemen were on the coast, and that they then arranged to meet at Salt Lake. There was an agreement between them that they should meet at Salt Lake for the purpose of discussing it.

Senator HUGHES. Who made that agreement?

Mr. STEELE. I do not know. I suppose it was between Mr. Eccles and these gentlemen.

Senator HUGHES. You did not have anything to do with it personally, and do not know?

Mr. STEELE. Nothing at all; no, sir.

Senator HUGHES. That is what I wanted to know.

Senator FRAZIER. Mr. Steele, one moment. I want to ask Mr. Steele one question. While I was examining Mr. Birch, I asked him a question with respect to the formation of the Alaska syndicate.

Mr. STEELE. Yes, sir.

Senator FRAZIER. And he did not answer, because he said he did not know as to the facts. I would like you to state the nature and character of that association or partnership, or whatever you denominate it, known as the "Alaska syndicate." I believe Mr. Birch said it was not a corporation, and I would like the committee to know just what is the nature of the partnership or association, or whatever it is.

Mr. STEELE. It was an agreement made in July, 1906, in the nature of a partnership, for a particular venture which they called the Alaska syndicate. The amount of the venture was limited in that agreement to \$10,000,000, but that amount could be exceeded with the consent of both parties. The particular things which were had in mind at the time the syndicate was formed were the acquisition of certain stock in the Northwestern Commercial Company, the acquisition from Mr. Rosene of the entire stock interest, I believe, of the Copper River and Northwestern Railway, and the acquisition of an interest from the Alaska Copper and Coal Company of an interest in the Bonanza Mine.

The CHAIRMAN. Who held all these? The Alaska syndicate?

Mr. STEELE. The Alaska syndicate.

Senator KEAN. They were to buy them?

Mr. STEELE. They were to buy them.

The CHAIRMAN. And the Alaska syndicate is not a corporation and is not a partnership?

Mr. STEELE. It was a partnership to that extent, that each one would be liable for the whole amount, up to that point.

Senator FRAZIER. In New York you denominate it a "gentlemen's agreement?"

Mr. STEELE. No; this is more than that.

Senator FRAZIER. More than a "gentlemen's agreement?"

Mr. STEELE. Yes; I think this is more binding.

Senator FRAZIER. In other words, it was an association of these two groups of financiers known as the Guggenheims upon the one side and the Morgans upon the other, to exploit various interests in Alaska, transportation interests, commercial interests, mining interests, and fishing interests. Is not that true?

Mr. STEELE. No, sir. I do not like that word "exploit." There was never any intention of exploiting anything. The intention was to create and develop and construct. They proposed to do that. as they have done all the way through, with their own money.

Senator FRAZIER. They were to acquire interests in these various kinds of property, were they not?

Mr. STEELE. Yes, sir.

Senator FRAZIER. Transportation properties, mining properties, fishing properties, and commercial properties?

The CHAIRMAN. As in the option set out.

Mr. STEELE. It was not exactly like that. We knew nothing about any coal or anything of that sort at the time the agreement was effected.

Senator FRAZIER. But you did know about the copper?

Mr. STEELE. We did know about the copper, and it was one of the things in which we were going to get an interest. We knew about the Northwestern Commercial Company. We were going to buy some of the stock of that. We knew about the Copper River and Northwestern Railway Company; we were going to buy the stock of that.

The CHAIRMAN. Referring to the telegram of December 7, signed by Daniel Guggenheim, which you testified was on behalf—and it appears on the telegram itself it is on behalf—of the Alaska syndicate, he formally accepts the option and signs the telegram Daniel Guggenheim; and you have testified, or Mr. Birch has, that that, of course, bound the Messrs. Guggenheim and the J. P. Morgan interests.

Mr. STEELE. Yes, sir.

The CHAIRMAN. How did it bind them?

Mr. STEELE. It bound them in this way—

The CHAIRMAN. You understood that Daniel Guggenheim had authority?

Mr. STEELE. No. Any interests that any end of that syndicate should acquire in Alaska must be offered to the syndicate at the cost price, or whatever terms they got. Then, if the syndicate wanted it, the syndicate took it. If the syndicate did not take it, he was at liberty to do what he pleased with it.

The CHAIRMAN. Suppose the lands mentioned in this option had been patented, and you had gone ahead and spent your money for it, and then refused to carry out the contract, and it would have been necessary for these gentlemen who had made the proposition, to sue. Who would they have sued or who could they have sued?

Mr. STEELE. They could have sued J. P. Morgan & Co. and Messrs. Guggenheim, because it was authorized by J. P. Morgan & Co.

The CHAIRMAN. How was it authorized?

Mr. STEELE. Just by word of mouth.

Senator DICK. I would like to ask one question if I may.

The CHAIRMAN. Certainly.

Senator DICK. In the beginning of this investigation a very broad charge was lodged here against Governor Hoggatt and Major Richardson as being lobbyists for the Guggenheims, and it has been as broadly denied. I want to ask if any negotiations were ever had between the Guggenheims and Judge Wickersham looking to the same kind of employment?

Mr. BIRCH. No, sir.

Senator DICK. Or any approaches made—

Mr. BIRCH. No, sir.

Senator DICK. By either side?

Mr. BIRCH. No, sir.

Senator DICK. Or any effort made to seek the favor of either?

Mr. BIRCH. No, sir.

The CHAIRMAN. Or any applications to the Alaska syndicate to be its attorney?

Mr. BIRCH. No, sir.

(Mr. Birch subsequently stated that his answer to the last question was erroneous, because of the fact that he had misunderstood the chairman's question, and the correction will be found at page —.)

Senator DICK. That is all.

The CHAIRMAN. Are there any other questions?

Senator HUGHES. I would like to ask one question. There was something said yesterday about a bill for a bridge, and another bill which it was not sure had been introduced. What is that other bill? I would like to know.

Mr. BIRCH. A bill for the relief of taxation of the railroad.

Senator KEAN. That bill has been introduced by Senator Smoot and referred to the Secretary of the Interior for a report on it.

Senator HUGHES. This record does not so disclose, nor does the record disclose that that was the bill that was referred to by the witness. That is what I want to know. I want to know what bill it was that he referred to yesterday.

Mr. BIRCH. The bill referred to was a bill for the relief of the Northwestern Railroad Company from taxation.

Senator HUGHES. Is that the bill that has been introduced?

Mr. BIRCH. I have learned this since. At the time I testified I did not know it had been introduced.

Senator HUGHES. And is that the bill introduced by Senator Smoot? Do you know who introduced it?

Mr. BIRCH. I think it was.

The CHAIRMAN. Is there anything else?

Mr. WICKERSHAM. I would like to say this: These gentlemen have offered themselves here for a wide-open-door cross-examination, and I would like to ask them some questions.

(The committee (at 1.15 o'clock p. m.) went into executive session to consider the request of Delegate Wickersham, of Alaska, to cross-examine Mr. Birch and Mr. Steele. At the conclusion of the executive session Mr. Wickersham was informed that the committee had decided to limit the cross-examination of the witnesses to members of the committee; but that if Mr. Wickersham desired to submit any questions in writing to the committee, the committee would recall the witnesses and the questions would be put by the committee.)

(The committee thereupon took a recess until 2.15 o'clock p. m.)

AFTER RECESS.

The committee reassembled at the expiration of the recess.

The CHAIRMAN. The committee will come to order. Mr. Birch, you notified me that you wanted to say something.

Mr. BIRCH. I desire to correct a statement that was made. I misunderstood your question, Mr. Chairman, relative to the employment or application of Judge Wickersham.

The CHAIRMAN. I have a transcript here of that matter, showing several questions at the end by Senator Dick.

Mr. BIRCH. Yes, sir; I misunderstood the last question there.

The CHAIRMAN (reading) :

Senator DICK. In the beginning of this investigation a very broad charge was lodged here against Governor Hoggatt and Major Richardson as being lobbyists for the Guggenheims, and it has been as broadly denied. I want to ask if any negotiations were ever had between the Guggenheims and Judge Wickersham looking to the same kind of employment?

Mr. BIRCH. No, sir.

Senator DICK. Or any approaches made——

Mr. BIRCH. No, sir.

Senator DICK. By either side?

Mr. BIRCH. No, sir.

Senator DICK. Or any effort made to seek the favor of either?

Mr. BIRCH. No, sir.

The CHAIRMAN. Or any applications to the Alaska syndicate to be its attorney?

Mr. BIRCH. No, sir.

The CHAIRMAN. That concludes the evidence.

Mr. BIRCH. I wish to correct that, and say "Yes, sir," to that last question.

Senator PILES. What is the last question?

The CHAIRMAN. Whether he made an application to the Alaska syndicate.

Senator PILES. To whom does that apply?

The CHAIRMAN (reading) :

Senator DICK. In the beginning of this investigation a very broad charge was lodged here against Governor Hoggatt and Major Richardson as being lobbyists for the Guggenheims, and it has been as broadly denied. I want to ask if any negotiations were ever had between the Guggenheims and Judge Wickersham looking to the same kind of employment?

Mr. BIRCH. No, sir; that was relative to lobbying. That was why I misconstrued these other questions.

The CHAIRMAN. The last question was put to him by the chairman, carrying out Senator Dick's line of questioning. In reply to that last question he said "No, sir."

Mr. BIRCH. I wish to correct that and make a statement in regard to that. Since Judge Wickersham has been a Delegate from Alaska he has never applied to us for employment. After he left the bench and started to practice law he did make application to be employed as attorney on the Pacific coast and in Alaska; but he was never employed, and we never had any connection whatever. That is all I desire to say.

The CHAIRMAN. He applied for what?

Mr. BIRCH. Applied for a position as attorney for the company.

The CHAIRMAN. To be attorney for the syndicate?

Mr. BIRCH. Yes, sir; in Alaska.

The CHAIRMAN. And he was or was not employed?

Mr. BIRCH. He was not employed.

The CHAIRMAN. When was that?

Mr. BIRCH. That was in 1908. I do not know the exact date now.

The CHAIRMAN. Is there anything else, Mr. Birch?

Mr. BIRCH. No, sir.

The CHAIRMAN. Are there any other questions, gentlemen?

Mr. BIRCH. I think I stated that that was after he retired from the bench and before he was a Delegate from Alaska.

The CHAIRMAN. Between those two dates?

Mr. BIRCH. Between those two dates.

The CHAIRMAN. Are there any other questions from any of the members?

Mr. BIRCH. I will arrange those maps as you desire.

The CHAIRMAN. We would be glad to have you do that and send them to the secretary of the committee, Mr. Birch.

Mr. BIRCH. Yes, sir.

Senator BEVERIDGE. And have them marked as the committee has asked you to mark them.

Mr. BIRCH. Yes, sir.

The CHAIRMAN. As they reach the committee the secretary will take very good care of them.

Mr. BIRCH. Well, I shall leave those.

The CHAIRMAN. A paper has been handed to me which I am informed is the list asked for this morning, as to the companies operating on the Yukon River and the persons backing them. They are the Northern Commercial Company, Northern Navigation Company, and the Alaska Commercial Company, with offices at 310 Sansome street, San Francisco; Leon Sloss, president; Louis Sloss, vice-president; William L. Gustle, treasurer-secretary; W. L. Washburn, vice-president and general manager; William Fairbanks, superintendent; W. F. Zipp, transportation manager.

This concludes the hearing, unless there is some question you wish to ask.

Mr. STEELE. I would like Mr. Birch to be allowed to file a list of the locations that were taken up in the Bonanza mines after the property had been conveyed to the Alaska Copper and Coal Company.

The CHAIRMAN. Certainly, if there is no objection.

Mr. STEELE. He was asked about it, and he could not state the number. Also, that statement regarding the law as to mining, which is quite different from that regarding coal lands.

The CHAIRMAN. This concludes this hearing, unless there are some questions. I wish to say to everybody present that this concludes the hearings on the Alaska matter. The committee is now going to take up hearings on entirely different matters—on statehood matters.

Mr. WICKERSHAM. I would like to hear the correction made by Mr. Birch. Will you not have the stenographer read over what Mr. Birch said in correction?

The CHAIRMAN. Oh, there is no necessity for that. We will have the whole thing printed.

Mr. WICKERSHAM. I would like to say that that is in writing, and I have the writing. It is an absolutely wrong statement to say that I ever applied to them to employ me. I want the committee to know what the fact is, and I want to hear the correction as made by Mr. Birch.

Mr. HUGHES. I think he is entitled to hear Mr. Birch's statement, and I want to be on record as saying he has a right to hear it.

The CHAIRMAN. Very well. The stenographer will read Mr. Birch's corrected statement.

The stenographer read the statement of Mr. Birch referred to, as follows:

Mr. BIRCH. I wish to correct that and make a statement in regard to that. Since Judge Wickersham has been a Delegate from Alaska he has never

applied to us for employment. After he left the bench and started to practice law he did make application to be employed as attorney on the Pacific coast in Alaska; but he was never employed and we never had any connection whatever. That is all I desire to say.

Mr. WICKERSHAM. The statement I want to make is in a letter I wrote to Mr. Birch in answer to one I received from him.

Senator KEAN. What did your letter state?

Mr. WICKERSHAM. Quoting from letter, written from Fairbanks, I said:

I am going to practice law. I shall stay here in Fairbanks until spring, although if you and your people should conclude to make me an offer that would be reasonable I could come at any moment during the winter. I say this to you because of your letter of June 3, which I have before me.

Senator KEAN. I do not see what fault anyone has to find to that.

The CHAIRMAN. Is there anything else?

Mr. WICKERSHAM. That is all, sir; only I did not want the committee to think I tried to get them to employ me.

The CHAIRMAN. If there is any other statement you desire to make, we would be glad to hear it. If not, the committee will proceed to the consideration of other matters.

165 BROADWAY,
New York, February 24, 1910.

HON. ALBERT J. BEVERIDGE,
*Chairman Senate Committee on Territories,
United States Senate, Washington, D. C.*

DEAR SIR: I find on reading over the report of my testimony given before your committee on Saturday last, on pages 148 and 149, regarding the brief filed in behalf of the Copper River and Northwestern Railway Company, in the case of Humboldt Steamship Company against White Pass and Yukon Route and others, that our position was not stated very clearly by me.

Our position is simply this: So far as interstate commerce in Alaska is concerned, the Interstate Commerce Commission has full jurisdiction. So far as commerce originating and ending within the confines of Alaska is concerned, jurisdiction is vested in the Secretary of the Interior by the act of 1898, which act has not been repealed and is still in force.

I further find that, in replying to your question, on page 143, as to what difference it would make whether the jurisdiction over the rates was in the Interior Department or the Interstate Commerce Commission, or any place else, I overlooked this important consideration.

It is the hope and expectation of the Alaska Syndicate to develop the agricultural resources of Alaska and to effect gradually the permanent settlement of those portions of Alaska which are suitable for settlement, so that there may be a permanent and gradually increasing population from which the railroad can derive revenue in the way of transportation of persons and traffic.

As was explained to the committee, neither the railroad nor the syndicate has any grants of land from the Government nor does either of them own any lands upon which such settlements could be made. The railroad can not, therefore, offer any inducements to settlers in the way of free lands or cheap lands. The only induce-

ments the railroad can offer are in the way of cheap transportation to persons intending to settle and cheap transportation for their effects, stores, and materials necessary to build their houses. This same inducement could be offered to any industry that proposed to construct its plant or works upon or near the line of the railway.

If the jurisdiction over railroads in Alaska shall be held to still remain in the Secretary of the Interior, permission could doubtless be obtained from him to give to settlers or industries intending to locate along the line rates of transportation cheaper than the regular rates.

If the interstate-commerce law shall be held to apply to traffic entirely within the confines of Alaska, then the giving of low rates to settlers or industries intending to locate along the line would be illegal and the railroad could not offer lower rates of transportation for the purpose of promoting the settlement and building up of the country.

I should like, with your approval, to have this letter inserted as a part of my statement before your committee.

I am, with great respect, very truly, yours,

JOHN N. STEELE.

EXHIBIT A.

The list of names referred to on page 134 is as follows:

Cunningham group.

Name of locator.	Name of claim.	Name of locator.	Name of claim.
Nelson B. Nelson.....	Frick.	Frederick Burbidge.....	Deposit.
Frank A. Moore.....	Syndicate.	Reginald K. Nell.....	Carlsbad.
Andrew L. Soodfield.....	Newgate.	John A. Finch.....	Bozeman.
Frank P. Johnson.....	Plutocrat.	Arthur D. Jones.....	Callals.
Horace C. Henry.....	Wabaah.	Alfred Page.....	Boston.
Charles Sweeney.....	Wallula.	W. W. Baker.....	Belmont.
William E. Miller.....	Tulare.	Walter B. Moore.....	Bedford.
H. W. Warner.....	Tampa.	C. J. Smith.....	Lyons.
B. C. Riblett.....	Clear.	Francis Jenkins.....	Lucky Baldwin.
Henry White.....	Socorro.	Orville D. Jones.....	Avon.
Ignatius Muller.....	Lobeter.	Michael Doreen.....	Ansonia.
Clarence Cunningham.....	Maxine.	Fred C. Davidson.....	Alblon.
A. B. Campbell.....	Collier.	Fred Cushing Moore.....	Adams.
Joseph Niel.....	Rutland.	Fred H. Mason.....	Adrian.
H. W. Collins.....	Tenino.	John G. Cunningham.....	Octopus.
Hugh B. Wick.....	Agnes.	Miles C. Moore.....	Ludlow.
Henry Wick.....	Candelaria.		

EXHIBIT B.

The list of mercantile firms, traders, and transportation companies operating in the vicinity of Nome, St. Michael, and lower Yukon River points is as follows:

Location and name.	Occupation.	Location and name.	Occupation.
NOME.		NOME—continued.	
Frank Rooney.....	Groceries and provisions.	T. J. Nestor.....	Wholesale liquors.
Snake River Grocery.....	Do.	John L. Bean.....	Traders' supplies.
United States Mercantile Co.	General merchandise.	Freeding & Borgen.....	Do.
J. P. Goggin.....	Furniture.	Carstens Bros. & Dashley.	Wholesale and retail butchers.
Darling & Dean.....	Miners' supplies and hardware.	Clark Lumber Co.....	Lumber.
Scheid & Co.....	Mining machinery.	J. S. Senon Co.....	Lighterage, oil, coal, and feed.
M. D. Samuels.....	Dry goods, etc.	James Gaffney.....	Clothing and furnishing goods.

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Location and name.	Occupation.	Location and name.	Occupation.
COUNCIL.		FORT YUKON.	
S. A. Keller & Co.....	General merchandise.	Chas. McInroy.....	Traders.
Big Four Co.....	Do.	Horton & Moore.....	Do.
SOLOMON.		CIRCLE.	
Archer Ewing & Co....	General merchandise.	Dodson & Jewett.....	Traders.
CANDLE.		EAGLE.	
Greenberg Trading Co..	General merchandise.	Ott & Sheele.....	Traders.
L. L. Mason.....	Do.	HOT SPRINGS.	
ST. MICHAEL.		C. A. Traeger.....	Traders.
Miners and Merchants' Supply Co.	General merchandise.	FAIRBANKS AND CHENA.	
Traeger & Williams....	Do.	Alaska Laundry.....	Traders.
HAMILTON.		Anderson Bros.....	Do.
Edwards & Shephard..	General merchandise.	Anderson, L. B.....	Do.
KOTLIK.		Asheim, Sam.....	Do.
Hunter & Ingersoll....	Traders.	Atkinson Bros.....	Do.
TOLOVANA.		Barrack, J. E.....	Do.
J. Riley.....	Traders.	Barrett Mercantile Co..	Do.
NENANA.		Bartell Brewing Co....	Do.
Duke & Johnson.....	Traders.	Berry, C. J.....	Do.
ANVIK.		Bloom, R.....	Do.
Max Simel.....	Traders.	Boas, N.....	Do.
UNALAKLIK.		Bredlie, A.....	Do.
Steinhauser & Duyer...	Traders.	Brockman, J. H.....	Do.
KALTAG.		Brown & Jonas.....	Do.
Aitchison & Lawrence..	Traders.	Brunbaugh, Hamilton & Kellogg.	Do.
RUSSIAN MISSION.		Burger & Bachman....	Do.
Betsch & Johnson.....	Traders.	Butler, Geo.....	Do.
KOYUKUK.		Cascade Laundry.....	Do.
John Evans.....	Traders.	Casey & Knell.....	Do.
DISKAKET.		Chambers, Joe.....	Do.
John Morrow & Co....	General merchandise.	Cleary Creek Commercial Co. (Chena).	Do.
INNOKO.		Davis, Thos. (Chena)...	Do.
J. McMann.....	General merchandise.	Deal, F. H.....	Do.
BETTLES.		Dealers Supply Co....	Do.
W. E. Plummer.....	General merchandise.	Dodson, J. R. (Chena)	Do.
H. M. King.....	Do.	Dominion Commercial Co. (Chena).	Do.
TANANA.		Eaton, A. E.....	Do.
Rodman Alaska Trading Co.	General merchandise.	Ellis, Joe.....	Do.
Vachon's.....	Do.	Fairbanks Brewing Co.	Do.
RAMPART.		Fairbanks & Dodd, Dome City.	Do.
J. Ramsdorf.....	General merchandise.	Fairbanks Hardware Co.	Do.
M. P. Fleischman.....	Do.	Finnegan, J. H.....	Do.
YUKON RIVER.		Ford, Jerry.....	Do.
Yukon Transportation and Trading Co.	Owners steamer Julia B.	Frey & Griffith.....	Do.
Wallace Langley.....	Owner steamer Tana.	Friedman, M.....	Do.
Miners' and Merchants' Co.	Owners steamer Minneapolis.	Friedman, E.....	Do.
.....	Owner steamer White Seal.	Gilroy, N.....	Do.
		Gordon, F. S.....	Do.
		Graves, J. H.....	Do.
		Gularte, M. G.....	Do.
		Hall, M. J.....	Do.
		Hamburger, H.....	Do.
		Hayes, E. F.....	Do.
		Horr & Child (Dome City).....	Do.
		Isaacs Bros.....	Do.
		Jaffe, N.....	Do.
		Johnson, J. I.....	Do.
		Jones, C. E.....	Do.
		Jones, L. A.....	Do.
		Kelly, J. F. (Chena)...	Do.
		King, H. M.....	Do.
		Kleinberg, N.....	Do.
		Kuhn, J. H.....	Do.
		Lavery & Jensen.....	Do.
		Lawrence, W.....	Do.
		Lee, L. A. (Chena)...	Do.
		Lilly, V. F.....	Do.
		Manley, F. G. (Hot Springs).....	Do.
		Marrymont & Burns..	Do.
		Martin, F. A.....	Do.

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Location and name.	Occupation.	Location and name.	Occupation.
FAIRBANKS AND CHENA—CON.		FAIRBANKS AND CHENA—CON.	
Martin, F. A.....	Traders.	Sickinger, M.....	Traders.
Mayhood & Stewart (Chena).....	Do.	Simson Bros.....	Do.
Marcereau & Clark (Chena).....	Do.	Slade, H. A. (Chena).....	Do.
Miller, Frank.....	Do.	Smith, J. H.....	Do.
Miller, R. H. (Chena).....	Do.	Spits, L.....	Do.
Monroe, E.....	Do.	Spring, S.....	Do.
Morgan & Litsey.....	Do.	Stein, A.....	Do.
Moyer, E. W., & Co.....	Do.	Stewart, C. J.....	Do.
Mung, J.....	Do.	Stewart, D. G.....	Do.
McArthur, A. J.....	Do.	Stewart & Mayhood (see Mayhood & Stewart).....	Do.
McDonald, F. B.....	Do.	Stoddart, R. R. (Tanana).....	Do.
McGinn & Sullivan.....	Do.	Suter, E. A.....	Do.
Nagel & Frager.....	Do.	Tanana Commercial Co.....	Do.
Nordal, A. J. (Cleary).....	Do.	Tanana Sheet Metal Works.....	Do.
Norten, D.....	Do.	Tanana Trading Co. (Chena).....	Do.
Noyes, F. G.....	Do.	Taylor, Thos.....	Do.
Owl Drug Co.....	Do.	Thorpe, Rusk & Smith.....	Do.
Palmer & Field.....	Do.	Times Publishing Co.....	Do.
Palmer, R. L.....	Do.	Timmerman, C.....	Do.
Peoples, E. R.....	Do.	Vining, R. L.....	Do.
Petree, D.....	Do.	Wagner, H.....	Do.
Phillips, Henry.....	Do.	White, J. L. (Chena).....	Do.
Red Cross Drug Co.....	Do.	White & Green (Chena).....	Do.
Reed, J. R. (Banner).....	Do.	Whitte, P.....	Do.
Rimer & McC.....	Do.	Willis & Welsh.....	Do.
Rome, A. B.....	Do.	Wilson, G. A.....	Do.
Roneaus, J.....	Do.	Wright & Marsh.....	Do.
Roscoe, Mrs.....	Do.	Chanquist, C. T. (Tanana).....	Do.
Ross, H.....	Do.	Hall, F.....	Do.
Rustemeier, W. J. (Little Delta).....	Do.	Griffin, E. W. (Chena).....	Do.
Ryan, D.....	Do.	Rose Cigar Co.....	Do.
Sales, J. L.....	Do.	Slippem, J. A.....	Do.
Sargent & Finska.....	Do.	Sutter, C. T.....	Do.
Schaupp, F.....	Do.		
Shinkle, W. A.....	Do.		
Sheppard Bros. (Chena).....	Do.		

Company.	Location.	Approximate number sailing vessels.	Canneries.
Alaska Packers' Association.....		22	14
North Alaska Salmon Co.....		4	4
Alaska Salmon Co.....	Nushagak.....	1	1
Alaska Portland Packers' Association.....	do.....	1	1
Columbia River Packers' Association.....	do.....	1	1
Alaska Fishermen's Packing Co.....	do.....	2	1
Naknek Packing Co.....	Naknek.....	2	1
Red Salmon Canning Co.....	Ugashik.....	1	1
Bristol Packing Co.....	Kvichak.....	1	1
Yakutat Southern Railway Co.....	Yakutat.....		1
Columbia Canning Co.....	Chilkoot.....		1
Pacific American Fisheries.....	Excursion Inlet.....		1
Philinket Packing and Trading Co.....	Punter Bay.....		1
Pacific Cold Storage Co.....	Taku.....		1
Pacific Coast and Norway Packing Co.....	Petersburg.....		1
Willar Bay Packing Co.....	Port Ellis.....		1
C. Barnes.....	Lake Bay.....		1
Kasaan Bay Packing Co.....	Kasaan.....		1
Kasaan Salmon Co.....	Shakaa.....		1
Victoria and Puget Sound Packing Co.....	Excursion Inlet.....		1
North Pacific Trading and Packing Co.....	Klawak.....		1
Madalago Island Canning Co.....	Ketchikan.....		1
A. Burkhardt & Co.....	Yes Bay.....		1
George T. Myers & Co.....	Sitka.....		1
Metlakatla Industrial Co.....	Annette Island.....		1
Total.....			41

Mr. BRANDEIS. I desire also to introduce in evidence the report of Mr. Storrs, which was produced by Mr. Birch yesterday. The report is a report of some length, and I desire to call the attention of the committee to certain portions of that report now which seem to me to be of considerable significance; but I think the whole report should go in evidence.

Senator SUTHERLAND. Are you offering that in connection with Mr. Steele's evidence?

Mr. BRANDEIS. I was going to ask Mr. Steele certain questions in regard to it.

Mr. STEELE. Before you do that I would like to submit to the committee, as I did on yesterday, that that is a private report made by Mr. Storrs to the Alaska syndicate, and paid for by the Alaska syndicate. It does not seem to me that that is a public document or a public report or a paper to which anyone has any right except the syndicate itself.

Mr. VERTREES. Is there anything in it bearing on this question, Mr. Steele?

Mr. STEELE. I do not know. I read it when it was first submitted; but I do not think there is, although I have not read it since it was first made, which is now nearly two and a half years ago.

Mr. JAMES. Isn't it upon the value of these coal fields?

Mr. STEELE. It was in relation to the coal fields, this particular group, and there may be something else in that report regarding the other coal fields.

Mr. MADISON. It was in regard to the extent of the fields and the probable quantity and also the quality of the coal, was it not?

Mr. STEELE. I can remember this, that it was in regard to the quantity of the coal and the probable quality and that the report was favorable; but the particulars of the report I do not remember.

Senator ROOT. When was this report made?

Mr. STEELE. It was submitted, I think, in the early part of November. I think that had been submitted before I wrote Mr. Stetson that letter.

Senator ROOT. In November—

Mr. STEELE. 1907; I am not sure of that.

Mr. BRANDEIS. Was it not the informal report that was submitted before you wrote that letter; but the formal report, the full detailed report, was submitted somewhat later—was submitted in December?

Mr. STEELE. I do not remember. You may be right; that may have occurred.

Senator ROOT. Mr. Chairman, it seems to me the committee ought to examine this paper in executive session in order to determine whether the purposes of this investigation require that it be made public, whether some parts of it should be put upon the record and made public, and perhaps some part of it reserved.

Mr. BRANDEIS. Mr. Chairman, I should like to be heard on that question. I should like to present here, now, certain portions of that report, to which, I believe, there can be no possible objections, which parts are very relevant, particularly in view of the testimony which Mr. Birch has given in regard to the plans proposed and in regard to the value, and I will, with the permission of the chair, refer to the particular portions which deal with the plans and the purposes of the Guggenheim syndicate in that connection.

The CHAIRMAN. Well, that will be hardly right if the committee are to examine it before you go on and read parts of it.

Mr. BRANDEIS. I would like to examine this witness in regard to it. Here is the document—I do not know that you care to hear argument, but if there is any doubt, and I do not believe there can be any question as to the propriety of the introduction of this document, which deals so directly with the question—

Mr. GRAHAM. Perhaps on the very points you want to ask about, Mr. Steele would not have any objections.

Senator ROOT. Suppose you go on and ask your questions, and if anyone has any ground for objection to any questions, the question may be objected to.

Mr. BRANDEIS. I want to call his attention to certain parts of the report—

Senator ROOT. And in the meantime not exhibit any part of the report except what you consider may be necessary as the foundation for your questions, and we will leave that for you to determine, subject, of course, to any right of objection.

Mr. BRANDEIS. Very well. Of course the purpose I desire is not merely to ask him questions, but I wish to put it in as bearing directly, as direct evidence, and bearing upon Mr. Birch's testimony.

Senator ROOT. Well, for the present time if you will go on with your examination—

Mr. STEELE. I am, of course, subject to the orders of the committee, but it seems to me that to read any portion of it makes it public property.

Senator PURCELL. Let him read it.

Mr. BRANDEIS. I will read it. I do not know what privacy there is in the report. I do not see there should be any question because it deals with private business. All questions in a court or in an investigation deal with private business.

Senator SUTHERLAND. Let me just make this one suggestion to Mr. Steele. Mr. Storrs, who made the report, would be a competent witness and he could be called to tell whatever he knew about the fields out there; he has not, I do not suppose, made any statement in here that he did not know to be the situation.

Senator PURCELL. And all the records out there in connection with the matter would be produced.

Senator ROOT. Then the report could be used in cross-examining him.

Senator SUTHERLAND. If there is anything in the report pertaining to the inquiry, I, myself, do not see why it should not be used; but if, of course, it is a matter that simply deals with private business and has no relevancy in the inquiry, then it ought not to be admitted.

Mr. STEELE. As I said awhile ago, I have not read it for over two years, but it was the report of Mr. Storrs to the Alaska syndicate regarding the condition of these coal claims, and when I say the condition I mean the quality and character of the coal, and probably the estimates as to the amount of money needed in the development of them, and everything of that kind.

Senator SUTHERLAND. The point I was trying to make to you, Mr. Steele, is that no person, it seems to me, can have a property right in

what somebody else knows about a fact. If that fact be relevant to the inquiry, we can call Mr. Storrs here and ask him what he knew about it—

Mr. STEELE. That is undoubtedly true, but I did not say that—I do not wish to argue the matter with the committee, and I will simply submit it.

The CHAIRMAN. Go ahead with your questions.

Mr. BRANDEIS. I want to introduce this particular portion of it first. It appears on pages 29 and 30 of Mr. Storrs's report. It is the heading which is entitled "Other lands" [reading]:

OTHER LANDS.

The principal groups of claims in addition to the Cunningham are the English company, Chezum, McDonald, Hartline, Davis, Willoughby, and Green. These are named in the order of their believed relative importance to the owners of the Cunningham lands and the railroad company, and their locations are shown on Plate II.

Part of the Chezum and the English company claims were examined by me. On the former very little coal was seen, but from its position with reference to the coal outcrops on the Cunningham lands I believe this group will carry a large amount of coal. On the latter group many fine coal outcrops were seen, and the samples taken and analyzed show most excellent quality. Quite thorough prospecting has been done by the English company, and fine trails have been graded about the lands. Some 300 coal outcroppings, many of them, of course, on the same seams, have been opened out, sections taken, and all are located by survey and very complete maps made. More of the coal on this group appears to have coking qualities.

The Hartline, Davis, and Green are all in the anthracite section of the field.

The Green is quite inaccessible for a railroad line, but the others could be reached by a branch from the line to the Cunningham lands, up Bering River and Canyon Creek, about 7 miles in length.

Reports seen regarding the Willoughby indicate that the seams thus far found are rather thin.

The McDonald group, on which a little mining has been done, has shown several marked faults. The quality of the coal appears to be good, but it is softer than the average of that seen on the Cunningham lands.

As regards an outlet, the McDonald lands are most favorably situated, being very close to the railroad line up Bering River.

The Chezum claims can be readily mined through the Cunningham lands, but as they have no other feasible outlet, unless a railroad be extended up Canyon Creek, which I think doubtful, it would not seem to me necessary at this time to acquire them.

The English company claims it would be good policy to control if possible, and probably the McDonald claims.

The Hartline, Davis, and Green claims in the anthracite section I do not consider so important to control at this time. The Pacific coast market for anthracite is very limited, and the coals are reported so badly crushed that the waste would be large and cost of mining high.

The Green claims are apparently rather difficult to reach with a railroad line.

Mr. BRANDEIS. Now, is it not a fact, Mr. Steele, that the claims on which Mr. Storrs makes either his informal report or brief report are claims which, together with the Cunningham claims, represent over 200 of the Bering River field claims; represent over 30,000 acres; and represent what is the very center and the very best part of the Bering fields?

Mr. STEELE. I do not know. I have no familiarity with that at all, except as you read it to me here in that report.

Mr. BRANDEIS. You do not recall that statement which I read to you?

Mr. STEELE. No, sir.

Mr. BRANDEIS. And is it not also a fact that this report does more than what you have indicated, as giving a favorable report on the Cunningham claims?

Mr. STEELE. I could not say, Mr. Brandeis. I only stated that that is all I remember about it. I have not read the report since it was first submitted, which I said was about two years ago, was it not?

Mr. BRANDEIS. Yes; it must have been over two years ago.

Mr. STEELE. I don't remember what was in the report. I do not know. But I said that because it was either in his report, or, as you suggested, in some other short report, that we at that time determined to go ahead and exercise the option, and I therefore said his report was favorable; but the particulars of it I am not familiar with.

Mr. BRANDEIS. Now, that question indicates one of many passages in this report bearing upon the scope and value of this property, and therefore bearing also upon Mr. Birch's testimony in regard to it, and are things that I desire to lay before the committee which are entirely in line with other matters that have been laid before the committee in connection with the value of these.

The CHAIRMAN. Go on and examine the witness.

Mr. BRANDEIS. I offer now this document in evidence.

The CHAIRMAN. Is there any objection to it?

Mr. VERTREES. So far as we are concerned we have none; but I understood that Mr. Steele had business reasons and that the committee have suggested that they take it under consideration, but we are interposing no objection whatever.

Senator FLINT. You appeared before the Senate Committee on Territories, did you not, Mr. Steele?

Mr. STEELE. I did.

Senator FLINT. You did that freely and of your own will?

Mr. STEELE. Upon our own request.

Senator FLINT. And you offered to tell all you knew about this Alaska coal matter?

Mr. STEELE. We went there for the purpose of explaining to the committee our entire operations in Alaska.

Senator FLINT. After making that statement, can you see any reason why this report should not be put in?

Mr. STEELE. I do not know of any real reason if you come down to it. My objection is based generally upon what seems to me to be the inexpediency of making private reports and private papers public which have no bearing upon the matter being investigated by this committee, because I do not know what is in that report, except as to its general trend.

Senator FLINT. You could not expect to appear before a committee of the Senate and testify to just a part of a report which you thought would be favorable to you and omit that part which you do not think would be favorable to your interests.

Mr. STEELE. Certainly not.

The CHAIRMAN. If there is no objection I shall rule that it be admitted.

Mr. STEELE. I shall withdraw my objection if the committee wishes it.

The CHAIRMAN. It is admitted.
(The report is as follows:)

REPORT ON THE CUNNINGHAM COAL LANDS AND BERING RIVER COAL FIELD NEAR
KATALLA, KAYAK DISTRICT, ALASKA, NOVEMBER, 1907.

PROPERTY.

The coal property recently examined in the Kayak recording district of Alaska consists of a group of thirty-three (33) as yet unpatented coal claims, of one hundred sixty (160) acres each, making a total of five thousand two hundred and eighty (5,280) acres. They are held by Mr. Clarence Cunningham, of Seattle, Washington, and thirty-two associates, each with a separate claim, but will be hereafter referred to as the "Cunningham coal lands."

Adjoining the coal lands surveys have been made for script entry of one thousand six hundred (1,600) acres of timber lands, and a claim has also been filed for a possible water-power development at the outlet of Kushtaka Lake, near the coal lands.

LOCATION.

The Cunningham coal lands are located about the center of the Bering River coal field, in Alaska. The position of this Bering River field with respect to the other coal fields and the principal markets of the Pacific coast is shown on Plate I, accompanying this report. Plate II shows the location of the Cunningham lands and other principal groups of claims in the Bering River field, also the projected railroad lines of the Copper River & Northwestern Railroad Co. from Katalla.

The Cunningham coal lands (see Plate II) are situated on the waters of Trout and Clear creeks, tributaries of Stillwater River, which flows into the Bering River, and this into Controller Bay at Chilcat Point, about ten miles east of Katalla. The distance by water from Katalla to the camps on the coal property is about thirty miles, but by the proposed railroad will be somewhat less.

The location of the Cunningham lands, at about the center of the Bering River field, justifies the belief that they include a considerable portion of the very best section of this region, and the topography is such as to permit of their development as favorably as, if not more so than any of the groups of claims.

The timber lands adjoin the Cunningham coal lands on the south and include the sites of the proposed dam at the outlet of Kushtaka Lake and the power plant on Stillwater River about 2½ miles from the dam.

TOPOGRAPHY.

The surface of the Cunningham coal property is very broken and rugged, as may be seen by reference to Plate III, which is based mainly on data from the United States Geological Survey maps, which were found to be remarkably correct and accurate.

The elevation varies from 150 ft. above tide where Trout and Clear creeks cross the southern line of the claims, to 2,650 ft. at the highest point near the northern side of the group, with several knobs and ridges of about 2,000 ft. above tide.

On Clear Creek and its tributaries from the north, and near the headwaters of Trout Creek, waterfalls of considerable height are found, the result of very abrupt raising of the measures, due probably to faulting, as described later on in this report.

The branches of Clear Creek from the south rise very abruptly, but without any marked waterfalls, due probably to the general northwesterly inclination of the measures, and with very prominent ridges between these small creeks.

Both Trout and Clear Creek valleys, for a considerable distance into the Cunningham lands, rise so moderately (under 500 feet) above tidal level, that they have cut numerous coal seams at low elevations and afford favorable opportunity for the development of a large tonnage above drainage levels.

The accompanying photographs, especially the panoramic views, will possibly convey more clearly an idea as to the character of the country in which these coal lands are located.

SURFACE.

The surface, below about 1,200 feet tidal elevation, is covered with a good growth of spruce and hemlock timber of all diameters up to five feet. A thick covering of moss, found on all the slopes of the hills, conceals the coal and rock outcrops; and ex-

cepting where the creeks have cut sharply through the measures, very few exposures are to be seen, and but little can be learned of the geological formation of the region without much labor for excavation. Considering the very numerous branch streams and the steepness of the slopes, this difficulty in securing geological data is surprising. Above the timber line, however, the moss covering is not so thick or so general and many coal croppings and rock exposures are to be seen. Dense thickets of alders, devils club, and salmon berries at many points make examination and prospecting of the lands difficult.

LANDS.

The Cunningham coal claims are known as the Adams, Albion, Ansonia, Avon, Lucky Baldwin, Lyons, Bedford, Bozeman, Calais, Carlsbad, Deposit, Candelari, Agnes, Tenino, Rultand, Collier, Maxine, Octopus, Lobster, Socorro, Clear, Tampa, Tulare, Wabash, Plutocrat, Ludlow, Newgate, Syndicate, Frick, Victor, Cunningham, Omega, and Rose, each, as before stated, of 160 acres, making a total of 5,280 acres. The relative positions of these claims are shown by Plate V.

TITLES.

This matter I did not examine into, understanding that your attorneys would pass upon it. I understand, however, that no patents have been issued for any of these claims, although all required payments have been made by the claimants and receivers' certificates issued and that the regularity of all the entries, etc., has been investigated and passed by U. S. special agents.

MAPS AND SURVEYS.

Practically nothing in the shape of maps of the property was furnished to me by Mr. Cunningham. The United States Geological Survey topographical map of the Controller Bay region and the maps furnished by M. K. Rodgers, of the Copper River & Northwestern Railroad, were of great assistance and served as the basis of the plates accompanying this report. Stadia surveys were made of several of the creek valleys, and numerous coal outcrops and rock exposures were located, their strike and dip were taken, and they are shown upon Plate IV, excepting where, owing to their proximity and the scale of the map, confusion would result.

GEOLOGY.

Mr. G. C. Martin, of the United States Geological Survey, has designated the coal-bearing rocks of the Bering River field as the Kushtaka formation, which, he states, "consists of several thousand feet of sandstone shales, arkose, and volcanic ash, with many coal seams." In a later report he places the thickness of this Kushtaka formation at from 3,600 to 4,000 feet and assigns it to the Tertiary age.

The prevailing strike of the measures throughout the portion of the field I examined was northeasterly, varying from north 20 degrees east to north 70 degrees east, and averaging about north 40 degrees east. The general dip is to the northwest, ranging from ten to eighty degrees, and averaging about forty degrees.

Numerous folds and faults were found, and they exhibit almost every possible direction of strike and dip, as is shown on Plate IV. The folds seen, however, I believe, are mainly of but little importance, with axes sharply inclined, and will rapidly disappear.

The faults generally seem to show only slight displacements and while they will probably considerably complicate the mining and somewhat increase the cost, I believe do not, in most cases, affect large areas. The inability to trace outcroppings, owing to the thick moss covering before mentioned, made it impossible to determine the extent of the displacement or length of these faults and folds.

Along Barretts Creek between the Falls and its junction with Clear Creek and on one branch of Trout Creek, there are faults (see Plate IV), with the greatest displacements observed on the Cunningham property.

East of Canyon Creek I was unable to make any examinations, but Mr. Martin reports this anthracite territory as "characterized by almost uniformly northwestward dips, frequently at low angles, and by numerous dikes and sills of igneous rock. The structure of this end of the field is hardly as simple as the low and apparently uniform dips seem to indicate. What seems to be monoclinial dip is in reality sometimes close overturned folding in which the rocks are bent back on themselves so that the opposite sides of a fold are parallel. The rocks are also broken locally by faults which cause a repetition of the beds, while there are also places where the beds are involved in complex close folding with steep and overturned dips."

West of the Cunningham lands, my examinations were confined to very brief glances at the English company and McDonald groups of claims.

On the English company's property there are numerous faults, mainly, however, probably not of great extent and apparently at least one anticlinal and two synclinal folds which affect the entire series of coal measures. The axes of these folds have a northeasterly course.

On the McDonald property numerous faults have been encountered in the small amount of mining done.

The extent of the Bering River coal field has not been determined owing to the coal measures passing under glaciers or glacial mud flats on all sides, as may be noted on Plate II, preventing any prospecting outside of the limits of the field as shown. It would appear that a continuation of the coal seams to a great depth on their north-westward dip might be expected, although definite knowledge as to this is not available.

COAL SEAMS.

Many outcroppings and test coal openings were seen, most of which are shown on the map, Plate IV, with the coal ranging from a few inches to over 30 feet in thickness (over 60 feet is shown in a "pocket" in one of the openings on Trout Creek). These coal provings are described in detail later on.

It would appear that there are not less than 15 workable seams of coal upon the Cunningham claims, and possibly more, although I am inclined to believe that the veins found on the northern half of the property are in part at least a duplication of those found on the southern half, having been raised by the faulting before mentioned as showing on Barretts Creek and one branch of Trout Creek.

DEVELOPMENTS.]

Practically nothing has been done towards developing any of the coal seams upon the Cunningham lands, nor in fact on any of the groups of claims in the Bering River field, the drifts and tunnels so far driven being really nothing but test or proving holes, the maximum length of gangway on any seam (the Big Vein on Trout Creek at Station 226) not exceeding 300 feet, and this driven in such manner as to be of doubtful value for future mining.

CONDITIONS FOR MINING.

Although the numerous veins of coal on this property are of good thickness, some in fact being almost too thick for the most economical mining, the cost of mining will be rather high and the mining problems many and difficult.

The large percentage of fine coal or slack produced, owing to the friability of the coal and the steep dips on which most of it must be mined; the numerous and in some cases extensive and complicated faults which will be encountered; the large fans and systematic ventilation which will be required, for considerable gas has already been encountered very close to the outcrops; in some of the veins the probable need of large quantities of mine timber and props; the frequent, sudden, and wide variations in the thickness of the same seam; and, when the veins are worked below drainage level, the probable large quantities of water which will have to be pumped, and the very high rate of wages, are among the reasons for a probable high cost per ton.

Against this can be offset the high quality of the coal, warranting the expectation of the highest possible market prices for the output, and the probability that on nearly every thin, lean spot in a vein there will be found a correspondingly thicker section.

The very large tonnage which can be opened up and mined by water level drifts and tunnels and gravity inclines will, of course, insure a minimum expenditure of capital for development per ton of annual capacity, although with the high labor rates and excessive freight charges on machinery and supplies the average cost of plant will probably be about that of a modern slope or shaft colliery in the States.

MINING METHODS.

The conditions to be met in mining in the Bering River field appear to be very similar to those encountered in the Pennsylvania, Shamokin, and Lykens Valley fields, where the coal is softer than the regular anthracites and is found on all sorts of dips, with frequent foldings and faultings. The heavy pitching seams must be worked with "full breasts," two thirds of the coal as mined remaining in the breast until completion. This involves the building of batteries at the chutes and the carrying of mainway brattices up the breasts.

The width of breast and pillar will have to be varied in the different seams, but an average of a chute turned every 17 yds., with breasts driven 7 to 9 yds. wide and pillars left 10 to 8 yds. wide, will, I believe, be found about right.

Where the pitch is not too heavy, it may be advantageous to drive the breasts partly across, instead of directly with the pitch, so that the coal will just run on the bottom down to the gangway and all be taken out as mined.

When and how it would be best to remove pillars it would be folly to suggest until some ground has been mined over and its behavior noted.

Electric haulage should be arranged for from the commencement of operations.

Liberal provision should be made for ventilation, which preferably should be secured by exhaust fans, thus keeping all gas, dust, and smoke off of the main haulage roads. This means attention to the size of airways and cross headings.

In seams as thick as most of those which will be opened on the Cunningham lands there should be no trouble in maintaining liberal air passages.

The manner and amount of timbering will, of course, vary with local conditions in each seam. As seen at the outcrops, the roofs of some seams indicate that very little timber will be needed, while others apparently are going to be hard to hold up.

COKING.

The only coking tests made were to place a tin can full of finely broken or powdered coal in the center of a heating-stove fire and allowing it to remain until all gas and flame ceased to appear on the top of the can. Several of the seams tested in this manner yielded a bright, silvery, finely porous coke, but extremely light, as might be expected from coals containing so little ash.

Only two of these coles were analyzed, giving the following results:

Coal from—	Moisture.	Volatile matter.	Fixed carbon.	Ash.
Trout Creek Station 226.....	0.80	1.20	92.25	5.75
Trout Creek Station 220.....	.82	1.92	93.66	3.90

Both of these samples were made from selected lump coal.

I believe that the majority of the coals found on this property, excepting possibly those having a fuel ratio of over 8, will coke in by-product ovens, but all are so low in volatile matter that it is doubtful whether they would maintain beehive ovens at a sufficiently high temperature to make good coke in that type of oven.

Mr. Martin, in the report before referred to, says "practically all of the coal here classed as semibituminous possesses such coking qualities that there is little or no doubt that by proper treatment a good coke can be made from almost any of it."

The good coking qualities of these coals are important, as it indicates that all of the fine coal, of which a rather large percentage will probably be made in mining, can be utilized either for steam or coking purposes.

The farther west we go in the field the higher the percentage of volatile matter, and consequently the better adapted are the coals for coking.

WEATHERING.

Judging from the very strong, hard outcroppings which were seen and which have been exposed for several years, I believe that the coal from most of the seams could be stored in the open without injury.

SPONTANEOUS COMBUSTION.

With the low sulphur and volatile percentages which are found in the Bering River coals, I should not expect any trouble in this respect. They have, of course, never been mined and stocked in quantity, so that the facts from an actual test are not known.

BURNING QUALITIES.

The coal from several seams was burned in the cooking and heating stoves at the camp on the property and gave excellent results. The freedom from clinkering and small amount of ashes to be handled were remarkable, the amount of smoke was small, and the heat very intense.

Coal from the seam at Station 299 on Clear Creek, analysis of which showed only 1.80 of ash, made an extremely hot fire, but, like anthracite, which it very closely approaches, required a fairly strong draft.

The coals from the Trout Creek Valley are also very satisfactory for smithing purposes.

TIMBER SUPPLY.

Upon the portion of the Cunningham coal lands lying below an elevation of 1,200 feet there is an abundance of good spruce and hemlock timber for mining purposes, suitable also for most of the building requirements about the plants.

There is not, however, sufficient for the life of the mines, and it is therefore very advisable to secure the Cunningham timber claims in connection with the coal properties.

I estimate that 2,000 acres of the coal lands are timber covered, and the timber claims call for 1,600 acres additional. These lands should produce 15,000 b. m. feet per acre, or 54,000,000 b. m. feet for both properties.

If additional timber lands adjoining or near the Cunningham lands can be secured, it would be prudent to take them.

CHARACTER OF THE COAL.

The coals of the Bering River field have been classified by Mr. G. C. Martin as the anthracites or all those east of the valley of Canyon Creek and the semianthracite or semibituminous coals covering all of the field west of the Canyon Creek Valley.

The relative areas of the portions of the field underlain by each class of coal are shown on Plate 11.

The Cunningham lands lie in the semianthracite or semibituminous district, and the coals therefrom are of both of these classes, as shown by their fuel ratios (per cent of fixed carbon, per cent of volatile matter), which range from 4.99 to 10.55, and average 7.10.

The coals found on these lands were either hard and strong, resembling the softer Pennsylvania anthracite or the hardest bituminous coals of the eastern United States, or extremely soft. Many of the seams show much crushing and shearing, and although the coals are hard, they are quite friable and have a flat, slippery, fracture, while others have a conchoidal fracture.

The percentage of fine coal which will be produced in mining, due to the heavy pitches on which it must be worked and to the friability, will probably be large. Most of the veins, however, appear to possess sufficient coking qualities to warrant the belief that all of this slack coal can be successfully used for steam purposes or for coking.

The coking quality apparently possessed by several of the coal seams is peculiar in that they make a coke of good appearance, although of light weight, notwithstanding the fact that the percentage of volatile matter they contain is considerably below that usually deemed necessary for a successfully coking coal. That the coke should be light in weight might be expected with the extremely low percentage of ash in the coals so tested.

ANALYSES.

The samples of coal from which the analyses in the following table were made were all taken from the seams in test drifts or outcrop proving holes by myself or my assistant, Mr. Chamberlain, and were cuttings of the entire seam (or bench thereof) section excepting where otherwise noted.

Many of these proving holes were not driven far enough into the seam to escape the effect of weathering, and it was impossible to determine the true physical characteristics of the coal or to distinguish small streaks of impurities which might be present. The analyses from such samples are therefore not as good as may be expected from the seams when properly opened up.

Where the separate benches of a seam have been analyzed a computed average analysis for the entire seam is given, the proper proportion of each bench being taken, although in some instances where a bench is thin and its ash content high it would probably be better not to attempt to ship the coal from this particular portion of the seam.

A few analyses of selected samples from the English company's claims are given, showing the coals on their property to be of very fine quality, but averaging somewhat higher in the percentage of volatile matter, and consequently probably better coking coals than the average of those on the Cunningham lands.

For comparisons some analyses of coals with which the Bering River coal must compete on the Pacific coast and of the standard coals of the world are given.

Analyses of coals from Cunningham lands.

Sample No.	Station No.	Location.	Moisture.	Volatile matter.	Fixed carbon.	Ash.	Sulphur.	Fuel ratio.	Remarks.
1	289	Clear Creek.	1.40	11.46	85.39	1.75	0.85	7.45	Upper 5 feet of seam.
1A	289	do.	1.80	10.74	85.16	22.30	.13	6.07	Lower 2 feet 4 inches of seam.
28	289	Seam average.	1.53	11.22	78.65	8.60	.61	7.01	
30A	305	Clear Creek.	1.47	8.33	87.90	1.80	None.	10.55	Selected lumps.
30		Branch Clear Creek.	1.00	11.81	85.19	2.00	.42	7.21	Selected from center.
31		Clear Creek.	2.13	8.49	84.18	5.20	.90	9.91	
31		do.	2.33	7.83	87.59	2.25	.85	11.11	
32		do.	1.50	8.50	88.40	1.60	None.	10.40	
32A		do.	1.81	9.89	86.95	1.35	Trace.	8.79	
		Seam average.	1.65	9.19	87.67	1.48	Trace.	9.54	
29	D.	Clear Canyon Divide	2.12	13.00	82.18	2.70	None.	6.32	
30		do.	2.58	10.22	81.70	5.50	None.	8.00	Selected lumps.
4A	245	Barretts Creek.	2.72	12.34	80.44	4.50	.15	6.52	Top 28 inches coal.
4B	245	do.	2.14	10.16	72.25	15.45	2.46	7.11	Upper middle 62 inches of coal.
4C	245	do.	1.88	10.32	74.70	13.10	2.37	7.23	Lower middle 50 inches of coal.
4D		do.	1.64	10.72	75.74	11.90	3.00	7.07	Bottom 24 inches of coal.
		Seam average.	2.09	10.68	74.92	12.30	2.12	7.01	
5A	245	Barretts Creek.	1.32	9.14	79.89	9.65	3.78	8.74	Top 21 inches of coal.
5B	245	do.	1.96	8.42	38.62	51.00	2.29	4.58	Middle 15 inches of coal.
5C	245	do.	1.32	10.24	76.14	12.30	3.56	7.43	Bottom 12 inches of coal.
		Seam average.	1.52	9.19	66.05	23.24	3.26	7.18	
6A	250	Barretts Creek.	2.16	9.30	77.14	11.40	2.07	8.30	Top 22 inches.
6B	250	do.	1.92	9.04	50.94	38.20	1.14	5.63	Bottom 19 inches.
		Seam average.	2.05	9.18	64.99	23.82	1.64	7.08	
7	253	Barretts Creek.	1.30	8.54	78.51	11.65	1.21	9.19	
8	256	do.	1.24	9.74	83.62	5.30	.12	8.58	
10	259	do.	1.16	10.34	69.25	19.25	.33	6.69	17 inches and 40 inches coal separated by 10 inches S. & B.
11	280	do.	1.04	9.30	79.66	10.00	.41	8.56	
14	264	do.	1.22	9.46	84.57	4.75	.36	8.94	
16	62	Branch Barretts Creek.	4.34	14.08	73.38	8.20	.50	5.19	
22A	34	Moore's Creek.	1.68	9.60	78.97	9.75	None.	8.22	Bottom 79 inches of coal.
22B	34	do.	1.44	9.22	62.74	26.60	2.12	6.80	Lower middle 14 inches of coal.
22C	34	do.	1.46	9.40	67.89	21.25	2.25	7.22	Upper middle 29 inches of coal.
22D	34	do.	1.64	9.94	85.76	2.50	1.17	8.64	Top 11 inches of coal.
		Seam average.	1.59	9.42	74.29	14.70	.65	7.88	
23		Moore's Creek.	1.36	10.38	85.76	2.50	.71	8.26	Coal 48 inches but lower 5 inches not taken.
24	32A	Branch Moore's Creek	1.20	9.56	86.94	2.30	Trace.	9.09	
15A	61	do.	3.10	13.24	81.26	2.40	.01	6.13	Top 10 inches of coal.
15B	61	do.	3.34	12.34	82.82	1.50	.40	6.72	Bottom 30 inches of coal.
		Seam average.	3.28	12.56	82.43	1.73	.30	6.56	
31A	151	Trout Creek.	1.62	14.37	77.21	6.80	.88	5.37	Top 14 feet of coal.
31B		do.	1.52	11.29	59.89	27.30	1.40	5.30	Bottom 1 foot of coal.
		Seam average.	1.61	14.16	76.06	8.17	.91	5.37	
32	154	Trout Creek.	1.92	15.29	77.29	5.50	.26	5.05	
34A	146	do.	2.65	13.93	74.12	9.30	None.	5.32	Selected 5 feet to 8 feet of coal taken at intervals, 30 feet of coal exposed.
34B		do.	2.02	13.41	81.22	3.35	None.	6.05	
34C		do.	2.17	12.45	81.58	3.80	None.	6.55	
34D		do.	2.22	11.83	81.85	4.10	.34	6.92	
		Seam average.	2.20	12.72	80.61	4.47	.09	6.34	
33	147	Trout Creek.	1.32	14.10	81.98	2.60	.28	5.82	
35	141	do.	1.70	13.07	79.93	5.30	None.	6.11	
36	142	do.	.76	13.76	81.03	4.45	Trace.	5.89	
47	123	do.	2.20	14.15	81.90	1.35	None.	5.79	
27	236	do.	1.48	10.14	50.78	37.60	.01	5.00	Face of drift 6 feet coal.
28A	226	do.	1.34	14.14	75.02	9.50	Trace.	5.30	Bottom 10 feet of coal.
28B		do.	1.40	11.06	83.09	4.45	None.	7.61	Do.
28C		do.	1.24	10.82	73.94	14.00	.12	6.83	Do.
28D		do.	1.12	13.28	72.60	13.00	None.	5.46	Do.
28E		do.	1.00	12.72	75.48	10.80	None.	5.93	Bottom 7 feet of coal.
28F		do.	1.20	11.34	56.96	30.30	None.	5.02	Top 3 feet of coal.
		Seam average.	1.23	12.32	74.92	11.53	.02	6.08	

Analyses of coals from Cunningham lands—Continued.

Sample No.	Station No.	Location.	Moisture.	Volatile matter.	Fixed carbon.	Ash.	Sulphur.	Fuel ratio.	Remarks.
45	Trout Creek.....	.86	13.50	80.89	4.75	Trace.	5.99	Selected lumps. Do.
46	220	.....do.....	1.38	13.52	82.55	2.55	None.	6.10
37	126	.....do.....	1.40	7.41	75.59	15.60	None.	10.20
25	188	Bear Creek.....	1.98	14.80	81.02	2.20	Trace.	5.48	
26	191	.....do.....	1.54	12.66	83.00	2.80	.77	6.56
17	107	Headwaters of Trout Creek.	1.38	7.10	60.42	31.10	.90	8.51	Center 3 feet 2 inches coal of 7 foot 8 inch seam. Bottom 33 inches coal.
18	108	.....do.....	1.02	10.38	79.75	8.85	Trace.	7.68
19	108	.....do.....	.98	9.40	76.67	12.95	.69	8.16
20	108	.....do.....	.98	9.14	80.88	9.00	1.73	8.85
21	102	.....do.....	1.98	11.56	84.41	2.05	Trace.	7.30

COKE ANALYSES.

28	226	Trout Creek.....	0.80	1.20	92.25	5.75	Selected lumps. Do.
46	220do.....	.52	1.92	93.66	3.90	

Analyses of coals from adjoining groups of claims.

Sample No.	Location.	Moisture.	Volatile matter.	Fixed carbon.	Ash.	Sulphur.	Fuel ratio.	Remarks.
2	Head Clear Creek....	2.88	10.48	85.44	1.20	0.09	8.15	Chesum claims, selected pieces. English Co., selected pieces.
40	Shepherd's Creek.....	1.44	14.18	73.13	11.25	3.86	5.15	
41	Lake Charlotte Tunnel.	1.86	16.00	79.89	2.25	0.46	4.99	Do.
42	Second Tunnel, Carbon Creek.	1.17	11.33	85.00	2.50	1.01	7.50	Do.
43	Summit Tunnel.....	1.32	12.97	84.81	0.90	Trace.	6.54	Do.
44	Head Carbon Creek...	1.83	12.00	82.87	3.30	Trace.	6.90	Do.

Comparative analyses.

Locality.	Moisture.	Volatile matter.	Fixed carbon.	Ash.
Cunningham, Alaska, average of 40 samples.....	1.68	11.04	78.72	8.55
Bering River, Alaska, United States Geological Survey, average 10 samples.....	4.78	13.27	78.84	7.13
Matanuska, Alaska.....	4.20	19.72	65.26	19.82
New South Wales, average 77 samples.....	1.92	35.09	54.08	3.94
Comox, Vancouver, average 4 samples.....	1.30	28.63	62.73	6.96
Nanaimo, Vancouver.....	2.19	30.76	56.52	19.53
Rook Springs, Wyo.....	7.5	35.50	52.70	4.30
Coos Bay, Oregon.....	15.5	41.5	35.00	8.00
Stone Canyon, Cal.....	5.00	45.00	38.00	8.00
Pocahontas, W. Va., average 38 samples.....	.72	17.43	77.71	4.63
Pennsylvania anthracite.....	3.38	3.81	83.79	3.43

The average analysis given for the Cunningham is that of all the samples taken. If one or two showing especially high ash (manifestly not fit to ship) be thrown out, the figures would be improved.

Other analyses are mainly from Bulletin 259, United States Geological Survey, page 147 (Martin).

It will be noted that the average ash content of the coals from the Cunningham and English Company's claims is less than that of any of the standard coals given in comparison, excepting the Welsh bituminous, and individual samples are the best of which I have ever seen analyses.

Most of the samples are of entire sections of the seam, or benches of same, except, of course, any partings, sulphur balls, etc., which should and could be separated from the coal in mining.

These samples do not represent the entire seam section, it is on account of the fact that the seam was not wholly exposed or because it was only desired to determine the general characteristics, anthracite or bituminous, of the seam.

The very low average percentage of volatile matter places these coals in a "smokeless" class, entirely distinct from and superior to any coals now being marketed on the Pacific coast, and in fact unequaled by any of the standard coals of the world for heating anthracite. This should make this Bering River coal a very desirable one for the United States Navy. The low ash and high fixed carbon give these coals a high average fuel ratio and heating value.

Analyses were made by the Tacoma Smelting Company laboratory, but unfortunately they were not equipped for calorimetric determination of the heating value, therefore can not give the B. T. U.

PROPOSED DEVELOPMENTS.

The ultimate development of the Cunningham lands will undoubtedly call for several crosscut tunnels, such as proposed by Mr. W. L. Hawkins in his report on this property and shown on Plate IV, from near Sta. 9 on Clear Creek; the others probably being one on Trout Creek, one to the southeast from some point on Clear Creek south of Sta. 299, and two from the Clear Creek Valley, one to the northwest and one to the northeast from near Sta. 276. At the present time, however, sufficient data as to the location of these tunnels is not available to justify the commencement of any of these tunnels with assurance of their being at the proper locations.

At the earliest possible date a survey corps should be placed on the property and the mapping of coal seam outcrops and faults and folds should be systematically carried on these carefully located and mapped.

For immediate development work the coal seam exposed at Sta. 306 on Moore's Creek, should be located on the other side of the creek and a water level gangway be driven on it westerly. This would develop coal and at the same time serve for the utilization of the proposed (Hawkins) tunnel (should it be found desirable to drive one) in which, from present indications, it would be the first seam cut, at a distance of about 1,400 ft. from the tunnel mouth.

A slope and airway should be driven on the 12 ft. seam outcropping near Sta. 34, Moore's Creek. This outcrop has an elevation of 850 ft. or 500 ft. vertically above the proposed tunnel level. This, on its 56 degree dip, would probably afford distance enough on the seam for two levels.

When this slope reaches the proposed tunnel level, gangways should be turned and driven east and west. This slope and gangway driving would accomplish the triple purpose of proving the dip and continuity of the seam; be serviceable for a second opening and for the ventilation of the tunnel, and without several such ventilation ways to the surface I do not believe this tunnel can be driven all the way through the measures unless two parallel tunnels are driven, and permit of the opening of considerable coal ready for mining as soon as the tunnel is connected to the slope workings.

It would probably also be prudent to sink a similar slope on the seam which outcrops at Sta. 246 above the falls on Barrett's Creek. Here the elevation is 1,257, or about 900 ft. higher than the proposed tunnel level. The dip is 33 degrees, which, if continued, will make the slope about 1,600 ft. long to the tunnel.

The driving of this latter slope would accomplish the same objects as in the case of the one just before mentioned, and in my opinion work on both should be pushed all that is possible, this in order that the permanent improvements, which must be made when the tunnel location is definitely established, as well as the driving of the tunnel itself, in preparation for an early large coal production, can be taken up at an early date.

The seams on which it is suggested to sink these test slopes are separated by the badly faulted measures which are to be seen on Barrett's Creek below the falls, and I deem it quite essential that the ground each side of this faulted section be exposed before work on the tunnel scheme be started. Should the measures on which the slope at Sta. 246 is to be sunk not hold their dip, or strike a syncline or a fault, an alternative tunnel plan from the foot of the falls on Barrett's Creek might have to be decided upon.

To provide some coal for shipment pending the completion of the proposed (Hawkins) tunnel, a water level drift might be opened and driven easterly upon the coal

outcropping at Sta. 298 on Clear Creek. This drift would not only serve to develop coal for immediate shipment, but would also give valuable information regarding the condition of the coal measures in the southeastern corner of the property. The coal opened by this drift, together with that from the drift before suggested, near Sta. 306 on Moore's Creek, might be brought in the mine cars to a joint tippie, possibly located at the site of the proposed tunnel mouth, near Sta. 9 on Clear Creek.

The most favorable point for the development of a considerable tonnage appears to be along Trout Creek, on the "Tenino" and "Adams" claims. Here a larger number of coal measures are cut at a low tidal level than at any other place on the Cunningham lands. It is true that a very large number of faults in the measures are also to be seen here, but they are not of a character, so far as can be judged from the surface exposures and small amount of gangway so far driven, to render this portion of the property unminable.

So many water level drifts can be opened, probably not less than nine (and possibly sixteen, considering both sides of the valley), within a distance of 3,300 ft. along the stream, and the coal from these can so readily be gathered to one tippie that it seems by all means the favorable point for first development.

These drift openings could be made at a minimum of cost and be producing a reasonable tonnage within the shortest possible time.

The knowledge acquired by the driving of these water levels would determine the advisability of a long crosscut tunnel, before suggested, for the Trout Creek Valley. At the present time it would appear that such a tunnel at an elevation of about 350 would be advisable.

If this assumption is correct, the proper elevation for the above suggested water level drifts would be about 500, and in order to accomplish the most economical gathering together of the coal from the several drifts at one tippie, these drifts should all be opened practically on the same level. Certain surface conditions and the locations of the faults, etc., would, however, indicate the advisability of establishing two levels for these drifts, some of the seams to be opened at about 440 and others at about 500. Additional following on the ground, and surveys, of seam outcrops and rock exposures are necessary before an exact determination of the location of the openings should be made.

The tippie for this group of openings on Trout Creek, giving consideration to both the mine and railroad conditions, should probably be located near the junction of Trout and Bear creeks. The rapid rise of Trout Creek above this point would not permit of proper grades in the tippie yard switches for gravity handling of the railroad cars.

This location would entail an average haul for the mine cars of about one-half mile from the various drift openings to the tippie.

These surface mine tracks I would propose, so far as possible, to build on trestling of six to eight feet in height, which later could be filled with the mine waste. This construction would raise the tracks so that the snow could be removed therefrom at a minimum expense, an essential condition in a region having as heavy a snow fall as the one under consideration.

Another available point for development is at Sta. 293, at the foot of Clear Creek Falls, where a water level could advantageously be driven, furnishing data for a later crosscut tunnel proposition, such as previously suggested at this point. It is, however, too far from the at present talked of railroad extensions and will not be required to supply the immediate demands for coal tonnage and can therefore well be postponed for a time.

Such a scheme for development as outlined above will call for a minimum expenditure for machinery and plant at the outset. Ventilating fans for the various openings, small hoisting plants and pumps for the slopes, mine cars and rails, and houses for the men are the essentials. The equipment of the entire plant for complete electrical operation should certainly be counted upon, but these preliminary developments should be made with separate small steam plants for the slopes and probably a steam-operated electrical plant of moderate capacity for the group of operations on Trout Creek.

The permanent electrical machinery should probably all be operated from Mr Cunningham's suggested water-power plant on Stillwater River, although I fear the cost per horsepower for development of this plant will be high.

WATER SUPPLY.

In connection with the question of mine development the matter of a water supply, both for steam purposes and for domestic uses, is important. The rapid rise of Trout, Moore, and Barrett creeks above the points of suggested developments will furnish

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ired water pressure, and the flow of these streams is, I believe, at all times han will ever be required for use on the property, but if not the watershed 1 in the Cunningham lands certainly affords opportunity for the impounding undant supply.

HOUSES.

question of the proper housing of the employees is also important. The valleys t, Moore, and Barrett creeks are narrow, with steep side slopes, and do not ocations for settlements to provide for any considerable population.

climate like that of this region, with heavy snow and rain fall, the men would otedly prefer to live very near the mines. For the preliminary development room for enough houses could undoubtedly be found close to the work, but mining really commences, with the resulting marked increase in the number oloyees and population, towns must be laid out. On Trout Creek it will prob-e necessary to go from 1 to 2 miles down the stream to find a suitable location a Clear Creek probably a mile.

cost of clearing up and properly draining such town sites will be a considerable

CAPACITY AND TIME REQUIRED TO MAKE DEVELOPMENTS.

th the suggested water-level drifts to be opened on Trout and Clear creeks, a p-son of 150 tons per day should be had within two months of the time these drifts the solid coal, and this should rapidly increase so that a year later an output of) tons daily should be reached.

will require four to six months to open the drifts into the solid coal, timber the mouths, and get surface tracks in shape between the drifts and the tipples.

ery little work can be done before May or June, owing to the difficulty of getting and supplies up the river.

he suggested slopes will not be of service in increasing the output, as the coal they lue will be stocked, but the ground opened by them will be in readiness for a id increase in the production as soon as the suggested tunnels are driven and cted to the slopes.

COST OF PROPOSED DEVELOPMENTS.

estimate the cost of opening the proposed water-level drifts and their development a daily capacity of 2,000 tons as below. The coal produced and sold during this velopment period would be offset by coal, the mining of which must be paid for, but ich, on account of the steep pitches, must remain in the working breasts until they mined to their limit of length.

Estimate of cost of improvements and equipment for capacity of 2,000 tons daily.

pening 12 drifts on Trout, Clear, and Moore creeks.....	\$12,000.00	
oet of gangways, chutes, and headings in drifts until re- quired capacity of 2,000 tons daily is reached.....	60,000.00	
entilating fans, motors, and air connections.....	25,000.00	
Electric plant, Trout Creek, 300 KW.....	18,000.00	
Boiler plant, Trout Creek, 500 HP.....	25,000.00	
Haulage motors.....	15,000.00	
Surface tracks from drifts to tipples.....	20,000.00	
Tipples, Trout and Clear creeks.....	20,000.00	
Mine cars, 300.....	20,000.00	
Mine buildings, shops, office, etc.....	15,000.00	
Sawmill.....	10,000.00	
Water supply.....	10,000.00	
Houses and hotel.....	50,000.00	
Store.....	5,000.00	
Clearing town site.....	15,000.00	
Incidentals, 10 per cent.....	30,000.00	
		\$350,000.00
For additional suggested development, not coal-producing until tunnels are driven:		
Slopes on Moore Creek.....	8,000.00	
Slopes on Barrett's creek.....	15,000.00	
Machinery, engines, boilers, and pumps for slopes.....	7,500.00	
Incidentals.....	5,000.00	
		35,500.00
		385,500.00

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For the proposed tunnel and water power developments there will be required:

Clear Creek tunnel.....	\$140,000.00
Trout Creek tunnel.....	60,000.00
Air compressor plants for same, electrically operated....	15,000.00
Water power electric plant, Stillwater River.....	50,000.00
Incidentals.....	35,000.00
	<hr/>
	\$300,000.00
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	685,500.00

With the completion of these tunnels a daily output of over 3,000 tons should be expected.

The above figures for the cost of the proposed immediate developments, \$385,500.00, are in excess of the amount contemplated by the agreement of July 20th, 1907, with Mr. Cunningham, but at that time a production of only 1,000 tons daily was contemplated.

The completion of the developments estimated upon, exclusive of the tunnels, will probably require 18 months from the commencement of the work, assuming that plenty of labor of all classes can be secured. As very little work can be done before May, 1908, the expenditure of the \$385,500 would therefore be distributed throughout the years 1908 and 1909.

The ultimate development of the property, as suggested earlier in this report, will probably call for additional tunnels, towns, and extensions of the power plant. This is too far ahead to estimate upon at this time, and the data for doing so are not yet available.

WORKING CAPITAL.

In addition to capital for the proposed developments, a working capital of at least \$100,000 should be provided.

COST OF MINING.

Very few of the seams on the Cunningham lands have been opened into the solid far enough to give the data necessary, especially in a new field, for a close estimate of the cost of mining. The great variation in the thickness of the seams also makes the estimating of an average cost difficult.

The methods of mining must in many ways be similar to those used in the softer anthracite seams of Pennsylvania, and based thereon I estimate the cost of mining for a daily output of 1,500 tons as follows:

	Per ton.
Mining.....	\$0.60
Gangways, chutes, and headings.....	.20
Rock work, tunnels, and faults.....	.15
Ventilation.....	.05
Timbering.....	.03
Loading and transportation.....	.20
Foremen and general expenses.....	.10
	<hr/>
Total inside.....	\$1.33
Tipple expense.....	.10
Power plant.....	.08
General expense.....	.10
	<hr/>
Total outside.....	.28
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Total labor.....	1.61
Supplies, mine timbers, etc.....	.20
Superintendence, engineers, and general office.....	.05
	<hr/>
	1.86

To this should be added a charge for exhaustion of lands of from 2 to 5 cents per ton, and an interest and depreciation charge of probably at least 5 cents per ton, making a total cost of from \$1.93 to \$1.96 per ton on railroad cars at the tipple.

QUANTITY OF COAL.

The facts at this time available do not permit of the making of any close estimate as to the quantity of coal on the Cunningham or other groups of claims.

All the surface indications are that the seams of coal, at least those northwest of the falls on the several creeks, continue on their northwesterly dips for a long distance and to great depth, but this is not a certainty.

have, however, that my preliminary estimate of 50,000,000 tons on the Cunningham is entirely safe. I did not attempt to give figures for the other groups, although from what was seen in the English company claims, a very large tonnage will be shipped from them.

TIPPLE.

Decision will probably have to be made in the tippie for hand picking of the small coal, by installing picking bands as well as screens, and it would be a wise thing to have the tippie so designed that the small coal can be washed or jigged if this be found necessary.

DETAILED DEVELOPMENT PLANS.

It is desired to commence work in the spring of 1908, arrangements should be made at once for the necessary detailed plans for the developments. An engineering corps should be on the ground as soon as the snow has sufficiently disappeared to admit of their securing desired information. In the meantime, from the data at hand, plans for most of the work can be gotten out, and such machinery and materials as are needed for a start purchased and shipped at Katalla, ready to rush up to the work at the earliest opportunity. In order to keep pace with the railroad construction and be ready to give them work, no time should be lost in the commencement of the development work.

WATER POWER.

For water power it is proposed to develop by a dam at the outlet of Kushtaka Lake, a flume or ditch of 2½ miles to a point on the Stillwater River where an effective head of 48 ft. can be secured and where the power plant would be located. The minimum flow is said to be 1,000 cu. ft. per second. The head is light and it impresses me that the cost of development will be high per horsepower. This is a matter which I think should be reported upon by a water-power expert before any expenditures are made in connection therewith. Mr. Cunningham, in order to comply with the law regarding the location of water power, is doing some work clearing out the line for flume, etc. If, as I believe, all of the slack coal or screenings can be shipped from the mines and if, it is important to secure and develop this water power, providing the cost of development is not unduly high.

MARKETS AND COMPETITIVE COALS.

The markets in which the Bering River coals should be sold would seem to be all the Alaskan and United States Pacific coast ports, and its principal competitors would be the British Columbia, Vancouver Island, Australian, Japanese, and State of Washington coals.

The average of Cunningham analyses (see table previously given) shows them to be good fuels as any of these competitors and better than most, especially outclassing the coals from Washington. It is considerably higher in fixed carbon than any of these coals and practically in the class with Pocahontas, West Virginia, coal, the standard of the United States, and may be expected to excel this in the desirable "smokeless" quality, due to the low percentage of volatile matter.

The San Francisco market appears to be relying more and more upon foreign coals, but imports for nine months this year being equal to the entire year ending June 30, 1906, Australia furnishing one-half of the imports.

I have been unable to secure desired information as to the total coal consumption of Alaska and the Pacific coast.

The following figures show the imports for the year ending June 30, 1906:

	Anthracite.	Bituminous.	Coke.
	Tons.	Tons.	Tons.
Alaska.....	304	41,481	7,628
Humboldt, Cal.....		2,011	
Los Angeles, Cal.....		3,780	3,397
San Francisco, Cal.....	33,175	479,573	66,796
Oregon, Oreg.....		2,400	
Willamette, Oreg.....	3,154	1,436	2,471
Puget Sound, Wash.....		55,229	197
Total.....	36,633	585,900	80,491

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The average import value given at San Francisco was \$3.50. This year's prices are higher, and the import value for Canadian and Japanese coals is \$4.00 and \$5.00 per ton.

The United States Geological Survey (Martin Bul. 284) estimates the Alaska consumption for the year ending June, 1905, at 257,000 tons. The increase in railroad consumption and other growth should soon materially increase this.

Mr. J. W. Harrison, reporting to the coal merchants of San Francisco, gave their 1903 consumption as 1,215,558 tons, of which 380,000 tons came from Washington and 84,000 tons was mined in California. The latter's production is now down to 25,000 tons and Washington is using nearly its entire production.

Mr. H. S. Fleming reports for 1905 for the State of California:

	Tons.
Production.....	72, 162
Imports, bituminous.....	492, 614
Imports, anthracite.....	58, 480
Coastwise, Washington and Oregon.....	525, 395
	<hr/> 1, 148, 653

The demand is increasing and there would appear to be little doubt of finding a market for 300,000 to 500,000 tons of coal of the superior quality of that from the Bering River field.

COALING STATION.

The possibility of securing the location of a naval coaling station at Cordova should not be lost sight of. The United States Government has been investigating the matter of the best location during the past summer, apparently inclining towards Seward. The superior quality of the Bering River coals, their low ash content and "smokeless" qualities and the desirability of having a coaling station located where such coals could be delivered in cars direct from the mines to the coaling wharves, it would seem, must appeal to naval authorities.

With the probability that our Government will hereafter maintain a considerable fleet on the Pacific and that this is the best coal and the most accessible coal field on the Pacific coast of the United States, there appears to be likelihood of a considerable market in this direction.

TRANSPORTATION.

The matter of an outlet for the coal from the Cunningham lands seems to be well provided for by the contemplated coal branches of the Copper River & Northwestern Railroad.

These lines, as shown to me, are of easy grades and can readily be brought to such points on the property as are convenient for favorable development of the coal.

The only question which arises in this connection I believe to be that of the character of car to be used on the railroad for carrying the coal to the shipping port, which will, of course, be the destination for the greater part of it.

In view of the fact that it will nearly all go into vessels, it would seem desirable to keep it as dry as possible. This, considering the excessive rainfall of the region, indicates some form of covered car, and, although not prepared to make any definite suggestion, I believe the type of car should have careful consideration before a decision is made.

Difficulty in unloading, which will be complicated by the freezing of the coal in the car, must be considered, as well as the devices for loading at the mines.

OTHER LANDS.

The principal groups of claims, in addition to the Cunningham, are the English Company, Chezum, McDonald, Hartline, Davis, Willoughby, and Green. These are named in the order of their believed relative importance to the owners of the Cunningham lands and the railroad company, and their locations are shown on Plate II.

Part of the Chezum and the English Company claims were examined by me. On the former very little coal was seen, but from its position with reference to the coal outcrops on the Cunningham lands I believe this group will carry a large amount of coal. On the latter group many fine coal outcrops were seen, and the samples taken and analyzed show most excellent quality. Quite thorough prospecting has been done by the English Company and fine trails have been graded about the lands. Some three hundred coal outcroppings, many of them, of course, on the same seams, have been opened out, sections taken, and all are located by survey and very complete maps made. More of the coal on this group appears to have coking qualities.

The Hartline, Davis, and Green are all in the anthracite section of the field.

The Green is quite inaccessible for a railroad line, but the others could be reached by a branch, from the line to the Cunningham lands, up Bering River and Canyon Creek, about seven miles in length.

Reports seen regarding the Willoughby indicate that the seams thus far found are rather thin.

The McDonald group, on which a little mining has been done, has shown several marked faults. The quality of the coal appears to be good, but it is softer than the average of that seen on the Cunningham lands.

As regards an outlet, the McDonald lands are most favorably situated, being very close to the railroad line up Bering River.

The Chesus claims can be readily mined through the Cunningham lands, but as they have no other feasible outlet, unless a railroad be extended up Canyon Creek, which I think doubtful, it would not seem to me necessary at this time to acquire them.

The English company claims, it would be good policy to control, if possible, and probably the McDonald claims.

The Hartline, Davis, and Green claims in the anthracite section I do not consider so important to control at this time. The Pacific coast market for anthracite is very limited, and the coals are reported so badly crushed that the waste would be large and cost of mining high.

The Green claims are apparently rather difficult to reach with a railroad line.

PROVINGS.

In detail, the coal showings seen are as follows:

Clear Creek.

On the "Carlsbad" claim, at Sta. 299, are found two outcroppings, probably of the same seam, separated by a fault. One of these has a dip of 30 N W, strike N 60 E and shows 7 ft. 2 in. of coal. Sample No. 1 is of the upper 5 ft., hard and bright, and sample No. 1A of the lower 2 ft. 2 in., which is soft. The coal shows the effect of crushing and has a flat slippery fracture. The extremely low ash content of the upper bench is remarkable. The other outcropping at this station is not fully exposed, but there is over 12 ft. of coal, bright and fairly hard. The dip is 26 N W and strike N 50 E. Sample No. 38 is of selected pieces from the center of this seam. Its fuel ratio is almost that of an anthracite coal. The elevation of station 299 is 283.

Near Sta. 298, another seam outcrops but is so faulted that no section could be taken. The dip is N W.

At Sta. 305, on a small branch of Clear Creek, in the northwest quarter of the "Carlsbad," at an elevation of 384, a seam is partially exposed, showing over four feet of hard, bright coal, from which sample No. 39A was taken. The dip is 22 degrees N 5 E. From its location and the similarity of the analyses, I believe this to be the same seam as that found at Sta. 299. The coal also shows, 500 ft. to the west, at Station 306 (elevation 412) near Moore's Creek, with dip 23 N W and strike N 70 E.

In the southeastern corner of the "Newgate" claim, at Station 293, a test drift has been put in on a seam which is not fully shown, but is over 12 ft. in thickness, of bright hard coal. The dip is 36 N. W. Sample No. 52 and No. 52A cover all of the exposed seam section. This seam is just at the foot of the first fall on Clear Creek, at an elevation of 540. The top of the falls is 132 feet higher.

About 100 ft. above the top of the falls, at station 277, 278, and 278A, are found the outcrops of two seams. The lower (Sta. 277) has the following section:

	Ft. in.
Coal.....	6 10
Soft mining.....	0 1
Coal.....	0 10
Bone.....	1 3
Coal.....	2 0
	11 24

Sample No. 50 includes all of the coal in this seam. The dip is 25 NE. and the interval eleven feet to the overlying seam at Station 278, which shows 35 ft. thick.

At station 278A the upper seam has a thickness of 47 ft. of clean coal and dips 30 NE. Sample No. 51 was taken at this outcrop.

200 ft. east on the "Ludlow," at station 280 (elevation 674), a test drift was put in a short distance on this seam, but this was not inspected owing to danger from gas.

No other coal exposures were seen in the Clear Creek Valley, but three-quarters of a mile east on the "Plutocrat" and thence northward along the Clear Canyon Divide a number of outcroppings were found, as shown on Plate IV. The most notable ones were a seam 10 ft. thick, 250 ft. east of station A, at an elevation of 1,730. Near this station there were several marked changes in the dip and strike of the measures. About 900 ft. NE. of the last, at an elevation of 1,780, over 9 ft. 6 in. of coal, rather soft, dipping 65 SE. and with a strike of N. 25 E., was seen. Near station B two seams, one 200 ft. east, at elevation 1,690, shows 7 ft. of coal, with dip 35 NE., strike S. 25 E.; the other 500 ft. east of the station being 11 ft. thick, dipping 20 NE., and the strike being N. 10 W. At station D, 6 ft. of coal dipping 30 NE., the strike S. 35 E., and elevation 1,584, was seen. Sample No. 29 from this seam did not include 5 in. at the top, apparently of poor quality, nor a streak of slate 1 in. thick, 30 in. from the top.

Following the Clear Canyon Divide to the northwest, across the head of the Clear Creek Valley, on the "Chezum" claims, No. 3 and No. 2, a number of coal outcrops were seen mainly under 3 ft. thick, but at station I, elevation 1,590, 4 ft. of coal, dipping 80 NW., and at station 40, elevation 1,528, over 5 ft. of coal, dipping 33 SE. These may be the same seam on opposite sides of a syncline.

Northwest of the last-mentioned outcrops, on "Chezum No. 2," the measures show many changes in dip and strike, but unfortunately the surface covering prevented the tracing of the folds into the Cunningham claims. It is quite possible that they are the effects of the same disturbance that caused the great faulting before mentioned as visible on Barretts and Trout creeks.

Barretts Creek.

Going up this stream from its junction with Clear Creek, across the "Socorro," five coal outcrops are to be seen, but they are badly disturbed and faulted, none of them showing in minable shape. This is the section of the greatest faulting observed on the Cunningham lands. Apparently the region to the northwest was raised very greatly relatively to the region to the southeast, and the lower coal seams in the north-western sections are, in my judgment, the same seams as those to the southeast.

About 1,300 ft. up from the mouth of Barretts Creek the Lower Falls are encountered. There are three falls on each branch of this creek, the elevation at the bottom of the lowest being 571, and at the top of the upper being 1,150 on the West Branch, and 1,247 on the East Branch. Above the Falls both main branches divide into a number of small streams, the valleys being simply very sharp gulches.

Along the Western Branch are found the greatest number of exposures of coal seams of workable thickness that are to be seen on any one portion of the Cunningham lands. This portion of Barretts Creek cuts the measures almost at right angles to the strike line and therefore affords a fine section of the coal strata.

The table shown below gives in condensed form the data regarding the coals seen on this part of the stream.

Coal outcrops—west branch Barretts Creek.

Station No.	Sample number.	Thickness of seam.	Thickness of coal.	Dip.	Strike.	Elevation.	Remarks.
245	5 A, B, C....	4' 11"	4' 11"	30 NW..	N. 45 E.	1,236	Coal shelly, 15' below next seam.
246	4 A, B, C, D.	13' 8"	9' 6"	33 NW..	N. 58 E.	1,257	
		2' 5"		37 NW..			
250	6 A, B.....	5' 0"	3' 5"	35 NW..	N. 68 E.	1,340	Some sulphur kidney. Faulted on high side. Faulted.
253	7.....		4' 7"	33 NW..	N. 60 E.	1,424	
256	8.....		6' 11"	35 NW..	N. 50 E.	1,450	
258			4' 0"	58 NW..		1,494	4" bottom coal very soft.
259	10.....	5' 7"	4' 9"		N. 40 E.	1,520	
260	11.....		2' 11"	26 NW..	N. 55 E.	1,535	
262			0' 8"	30 NW..		1,556	18" bottom coal very soft, bottom irregular. Seam not exposed. Very soft, no covering, 800' east of station 257.
263			5' 6"	NW..		1,579	
264	14.....		6' 4"	58 NW..	N. 40 E.	1,581	
267			Crop.	40 NE..	N 60 W.	1,630	100' NE. of last, very soft.
62	16.....		17' 0"	40 NW..	N. 45 E.	1,800	
			4' 6"	69 NW..		1,785	

The headwaters of the branch of the Main East Branch of Barrett's Creek, flowing through the center of the "syndicate," cuts into very disturbed measures between stations 58 A and 66.

One seam 11 ft. thick is cut at station 63 A, elevation 1,510, but it was too soft to get a detailed section. The dip is 64 NW. and strike N. 40 E. 700 ft. upstream, at the head of this branch, an outcrop showing 22 ft. of very soft coal, with dip 75 NW. and strike N. 30 E., was seen.

Between these last several foldings of the measures were observed, and it is quite possible that these two are the same seam of coal.

On the next branch to the eastward, near station 67, is an outcrop reported as being that of a 25 ft. seam. This was not seen, but the same seam where it crosses the branch is faulted and unminable. From the relative locations I judge these last mentioned outcrops may be of the same seam as that at station 63 A.

The more easterly branches of Barrett's Creek crossing the "Newgate" were not examined, as it was reported that no outcrops had been opened thereon.

Moore's Creek.

The first coal seen in going up this stream is that at station 306, previously mentioned.

Near station 32 A, elevation 888, coal 5 ft. 6 in. thick, with dip 54 NW. and strike N. 50 E. and coal 42 in. (sample 24), hard and bright, dipping 52 SE. and on strike of N. 75 E. found on opposite sides of a small branch stream, are probably the same seam. A fault plane running about N. 50 E. was noted between the two outcrops.

Near station 34, elevation 850, with dip 56 NW., strike N. 40 E., a vein with the following section was:

	Ft.	In.
Coal (sample 22 D).....	11	
Slate and bone (sample 22 D).....	2	½
Coal streaked (sample 22 C).....	2	5
Slate and bone.....	7	
Coal (sample 22 B).....	1	2
Slate.....	1	
Coal (sample 22 A).....	6	7½
Total vein.....	12	0

A short distance above this was found four feet of coal, hard and bright, excepting the lower 5 in., which was not taken in the sample, No. 23.

About a hundred feet higher in the measures, a coal and slate mixture of two feet is found and ninety feet across the measures, above this, 1 ft. 6 in. of coal.

The last four exposures are along a very sharp rise in the creek just below the foot of the Lower Falls, at station 35, elevation 950. The top of the Upper Falls, at station 275, has an elevation of 1,213. It is quite probable that other coal seams outcrop in the measures exposed by the falls, but this section of the stream was inaccessible.

Upstream from the falls, the first coal, apparently a seam of considerable thickness, is found south of station 268, at an elevation of about 1,320. This was so badly faulted that no section could be taken. The dip was northwest.

Three hundred and fifty feet northeast of this, on a small branch, near stations 84 and 85, two small coal outcrops were seen, dipping 35 NW. on strike of N. 35 E.

Continuing up the main stream, station 87, elevation 1,423 is at the top of a falls, about 70 ft. high. Here a marked anticline fold is seen, the dip to the southeast being 81 degrees. At the foot of the falls a syncline is found and the dip changes to northwest again.

Above the falls the Moore Creek Valley becomes a vast amphitheater with an elevation ranging from 1,425 to 1,550 feet, surrounded by ridges ranging from 1,900 to 2,600 feet in elevation.

The branches of the creek to the west and north are barren of coal exposures, but to the eastward several small forks of the east branch form sharp gulches in which coal is seen.

At station 88, elevation 1,802, coal is 12 ft. thick but soft and cut off to the rise by a horizontal step fault. The dip is 44 NW. and strike N. 60 E.

Higher up the ridge, to the northeast, near station 61, at an elevation of 1,925, with dip 52 NW. and strike N. 55 E., the following seam section was found:

	Ft.	In.
Coal, hard (sample 15 A).....	10	
Slate.....	1	
Coal, hard (sample 15 B).....	20	
Coal, very soft (sample 15 B).....	11	
Total vein.....	3	6
Total coal.....	3	5

Three hundred feet east, on the next branch of the stream, at stations 77 and 78, are found one badly faulted outcrop, showing coal for nearly forty feet along the creek bottom body, but badly disturbed and mostly slate to the rise, dipping from 63 to 67 NW. and the strike from N. 50 E. to N. 65 E., and another showing 8 ft. of very soft coal, dipping 20 NE. on a strike of S. 80 E. I believe these possibly are the same seam, on opposite sides of a fault the plane of which passes through station 79.

About three hundred feet east of station 92 A, at an elevation of 1,535, this section was seen:

	Ft.	in.
Coal.....	22	
Slate.....	6	
Coal.....	28	
Total vein.....	4	6
Total coal.....	4	0

The dip was 33 NW. and strike N. 60 E.

On and near the head of a westerly fork of Moores Creek, branching from the main creek at station 273, several coal outcroppings were seen. The notable one, northeast of station 118, at elevation 1,850, shows about 25 ft. of soft coal, with dip 6 NW. and strike N. 45 E. Down the stream one hundred feet from this coal, an anticlinal fold, would appear from its position and direction to be the same one observed near station 87, and before mentioned.

About 75 ft. southwest of station 99A, 8 ft. of coal dipping 22 NW. on strike N. 60 E., exhibits great irregularity, in both top and bottom rocks. The elevation is 1,810.

Near the Trout-Clear Divide at station 117, elevation 1,982, two seams of coal are found close together, the section here being

	Ft.	in.
Coal, soft.....	2	9
Rock, interval.....	8	
Coal, bony	8	
Coal, soft.....	6	4

The dip is 23 NW. and strike N. 75 E.

Trout Creek.

Four hundred feet west of the last mentioned outcrop, and on top of the ridge, at an elevation of 2,044 (Sta. 101), an outcrop of 32 ft. of very soft shelly coal is found, with two large benches of coal and slate mixture. To the southwest within a distance of sixty feet, this seam has pinched down to four and one-half feet. The dip at the thickest part of the seam is 66 NW. and strike N. 20 E. Just northwest, near Sta. 104, 119, and 120, faults are found showing a section about 700 ft. wide, measured across the normal strike lines, which is badly disturbed.

At Station 120, elevation 1,759, north of a fault plane, a crop showing over 8 ft. 6 in. of coal (the top was not found) dips 28 NW. on strike of N. 47 E., and twenty feet southeast, south of the fault plane, coal 5½ ft. dips 13 NE., and the strike is N. 25 W. These probably are the same seam.

The average course of the fault plane is N. 65 E., and its dip sharp to the northwest.

Another marked fault is seen at Sta. 104, elevation 1,855.

At Station 103, a coal outcrop about 18 ft. thick, with many streaks of slate and dirt (a detailed section could not be taken), was found. The dip was 42 NW., strike N. 85 E., and elevation 1,890.

A disturbed outcrop, of which no section could be secured, was found at Sta. 102, elevation 2,014. The coal was hard, and some selected pieces made sample No. 21, which shows excellent quality.

The average dip was 60 NW. and strike N. 65 E.

To the northwest from these last given coal outcrops nothing minable was found for about 1,200 ft., where at Sta. 106, at elevation 1,536, occurs this section:

	Ft.	in.
Coal.....	3	
Slate.....	6	
Coal.....	2	9
Total vein.....	3	6
Total coal.....	3	0

Sample No. 17 was only of the lower bench and shows very high ash percentage. The dip here varied from 22 to 34 NW., and the strike was N. 60 E.

At station 108, elevation 1,600, sample No. 18 was obtained from the following section:

	Ft.	in.
Coal.....	5	1
Shale.....	1	2
Coal.....	1	2
Shale.....	1	1
Coal.....	2	8
Total vein.....	4	6
Total coal.....	4	3

The dip was 40 NE. and strike S. 85 E., and to the rise the outcrop was faulted.

A short distance northeast and about 40 ft. higher an outcrop of three feet nine inches of coal, dipping 22 NW. with strike N. 55 E. was found. Sample No. 19 was from this seam.

Downstream from Sta. 108 several small outcrops were seen, one from which sample No. 20 was taken, showing three feet six inches of coal and dipping 40 NW. with strike N 85 E.

The outcrops so far referred to on Trout Creek are on the headwaters of the branches of this stream, rising along the Trout-Clear Divide and on the "Agnes" and "Maxine" claims.

Turning now to the main Trout Creek Valley on the "Adams" claim, up a small branch to the west, at Sta. 151, elevation 373, the dip is 47 SW. and strike N. 5 W., and the section—

	Ft.	in.
Coal, hard and bright (sample 31A).....	13	0
Coal, soft (poor quality, sample 31B).....	1	0
Total coal.....	14	0

On the opposite bank of the branch at Sta. 149 what is apparently the same seam shows from 2 ft. 9 in. to 3 ft. 8 in. of coal, with dip 46 NW. and strike N. 55 E. and elevation 393.

A fault plane separates these last two outcrops and explains the change in direction of the strike.

About 150 ft. up the branch at Sta. 150, elevation 416, a faulted outcrop shows coal from one inch to five feet, average dip 32 SE. and strike N. 20 E.

On the next, to the north, branch, from the west, sample No. 32 was taken from an outcrop near Sta. 154, showing—

	Inches.
Soft coal (no good, not sampled).....	3 to 5
Coal, good (sample No. 32).....	20 to 23

The dip was 39 NW., strike N. 10 E., and elevation 324. Just across the branch this seam shows only twelve inches thick.

At Sta. 228, elevation 378, a test drift shows coal faulted, dip 36 NW., strike N. 16 E.

On the next branch, near the south line of the "Tenino" and about 450 ft. west of Trout Creek, an outcrop showing 5 ft. of coal with top rock not found, dips 30 SW., and the strike is N. 10 W. The elevation is about 490.

Between this outcrop and Trout Creek faulting is seen along the creek and just south of same the sand rock is cut by a marked fault.

Near the head of this small branch at the "Tenino," the southwest corner, Sta. 135, at an outcrop, not fully exposed, shows over 3 ft. of rather soft coal.

The dip is 48 NW., strike N. 18 E., and elevation 644.

In the next gulch, at Sta. 138, elevation 532, another only partly exposed outcrop shows over 6 ft. of coal dipping northwest.

On the opposite side of the main Trout Creek Valley from this last, at Sta. 146, elevation 444, a very fine large seam could only be partially exposed owing to dirt slides.

The dip was 38 NW., strike N. 60 E., and the coal hard and bright. Samples 34 A, B, C, and D were taken so as to include most of the exposed seam.

One hundred and fifty feet north of the last, at Sta. 147, elevation 460, with dip 65 NW., and strike N. 55 E., the following section was taken:

	Ft.	in.
Coal.....	2	6
Clay ball.....	10	10
Coal, hard and bright.....	4	4
Coal, soft (not sampled).....	—	4
Total vein.....	8	0
Total coal (good).....	6	10

Sample No. 33, taken here, shows this coal to be of very excellent quality.

Crossing back to the west side of Trout Creek at Sta. 141, elevation 450, a coal seam with a maximum thickness of 4 ft. 10 in. and minimum of 3 ft. 8 in. with very rolling roof, dips 19 NW. and the strike varies from N. 45 E. to N. 75 E. Sample No. 35 was taken here.

Station 144, across the gulch, elevation 472, shows only two feet of coal, all excepting the lower 8 inches soft. The dip is 20 NW. and strike N. 15 E. This may be the same seam as that at station 141 and both on the same coal as the test drift at Sta. 142, elevation 405, just alongside of the Main Trout Creek from which sample No. 39 (selected lumps) was taken, the analyses being quite similar.

Three hundred fifty feet west by north from this test drift at Sta. 133, elevation 477, coal, hard and bright, 13 ft. 6 in. thick with dip 27 NW. and strike N. 20 E., is only 30 feet lower, across the measures, than the so-called "Big Vein" at Sta. 132, not here well exposed.

Sample No. 47, of lump, selected from several points across the section, shows this to be a very excellent coal, but although fully as high in volatile matter as other Trout Creek coals, it would not coke.

The "Big Vein" is opened by a test drift at Sta. 226, which has followed a seam westerly for 350 ft., and from which cross-cuts have been driven as shown on the map. A maximum thickness of over 60 ft. is here shown and from this thick section samples 28 A, B, C, D, E, and F were taken.

Sample No. 27 was taken from the face of the drift, which apparently is near the roof of the seam and the analysis of which agrees fairly well with No. 28 F, which was from the upper part of the seam. This coal coked successfully.

The strike of the seam as shown in this tunnel is about N. 55 E. and the dip over 45 degrees. The great thickness here shown is unquestionably a pocket, and from the rock exposures somewhat further up the stream and the coal exposures on the opposite side of the valley at and near Sta. 174 I believe is caused by faulting to the dip from the test drift.

The outcrop at Sta. 174, elevation 503, shows a large seam over 12 ft. badly faulted, and on the southeast dip (17 degrees) the reverse of normal, the strike being N. 35 E. Along the small gulch, from the east, just south of this last outcrop, at Sta. 169, 171, and 172, several small outcrops with reversals of dips and strikes are to be seen. About 100 ft. north of Sta. 174 a faulted coal outcrop shows several different dips and strikes, but 62 NW. dip and strike N. 35 E. appears to be the average.

The outcrop at Sta. 129, elevation 599, about 200 ft. north by east from the last mentioned, exhibits a badly faulted coal seam and apparent strikes of N. 80 W. (dip 28 NE.) and N. 85 E. (dip 85 NW.) can be seen.

Just north of this, at Sta. 229, elevation 616, there is a showing of 8 ft. of coal with seam not all exposed, dipping 53 NW. and with strike N. 80 E. About sixty feet northwest, at Sta. 230, elevation 586, another outcrop of ten feet of fairly hard coal shows the top dipping 65 NE. and bottom almost flat, with strike N. 85 W. The last two outcrops may possibly be of the same seam, and may also be the seam opened by the test drifts, one on each side of Trout Creek, from the westerly one of which sample No. 45 was taken.

Up the next small branch of Trout Creek, at Sta. 156, elevation 635, occurs a badly faulted outcrop, the coal being mixed with shale, but the general dip being 29 SW. and strike S. 40 E. Across the gulch and 100 ft. down stream, at Sta. 157, elevation 618, is a showing of 6 ft. 9 in. of coal, but faulted towards Sta. 156. A fault plane found a little higher up the creek, with a course of N. 85 E., would pass between the last two outcrops.

Fifty feet to the northeast, at Sta. 158, elevation 615, a rather irregular outcrop was seen, averaging about sixteen feet of coal, dipping 25 NW. and with strike N. 10 E. This would appear to be the seam on which the test drift at Sta. 220 was driven, at an elevation of 551, and from which sample No. 46 was taken. The same vein was opened at Sta. 213, elevation 488, but in faulted ground. Upraises, however, were driven connecting the two drifts. The drift which was started at Sta. 217, reported to have "good coal along the bottom," was probably on the same seam on the northern edge of the fault.

North and west of the drift, at Sta. 220, several outcrops are noted on the map, the thickest coal being that found at Sta. 162, elevation 672, with dip 16 NW. and strike N. 20 E., showing 8 ft. of bright coal, but with 12 in. at top and bottom very soft.

Another test drift at Sta. 126, elevation 625, follows the seam for nearly 200 ft. and shows its thickness to vary from 3 ft. to 6 ft. and the dip from 28 to 38 NW. The strike, as shown by the course of the drift, varies considerably in the distance driven. Sample No. 37 was taken at the face of this drift.

In the northeastern quarter of the "Tenino" quite a number of coal outcrops were found, but all in faulted ground and shown on the map at stations 204 to 212, along

a branch to the east of Trout Creek. The main stream crossing the line into the "Collier" claim, swings to the northeast and here the measures are more regular, dipping NW. about 50, with a strike of about N. 40 E. Several small outcrops were found here, but not located by survey. The falls of Trout Creek are on this branch of the stream, at the headwaters of which are found the coals previously described as at stations 106, 107, and 108.

Bear Creek.

This is the largest branch of Trout Creek, and a series of falls occur on it near the southeast corner of the "Tenino." Above the falls along this stream, passing through the "Agnes," a number of coal showings were found; also some faulting and folding of the measures. At Sta. 188, elevation 951, a seam of bright, hard coal dips 44 NE. on a strike of S. 40 E. Sample No. 25 was taken here.

At station 191, elevation 1,058, was found the following:

Coal.....	3 ft. 0 in.	poor.
Coal.....	3 ft. 2 in.	good, hard; sample No. 26.
Slate and coal mixed.....	1 ft. 6 in.	no good.

The dip was 26 NE. and strike S. 75 E.

The analyses of samples No. 25 and No. 26 are very similar and it is quite possible these last two outcrops are of the same seam.

At Sta. 195, elevation 853, with dip 33 SW. and strike S. 15 E., an outcrop, only partially exposed, showed a seam 11 ft. thick, part of which was good hard coal. This, it will be noted, was on the reverse dip to the last-mentioned seam, the anticline showing in the measures between the two outcroppings, and its axis on a course of N. 50 W. appears to be dipping to the southeast.

It is possible that the seam at Sta. 188 and that at Sta. 195 may be identical.

There are many wide gaps between coal exposures and apparent great inconsistencies between the dips and strikes observed, in some cases in close proximity to one another. Careful exploration work, with surveys and levellings, are necessary to explain these observed facts and to work out some probable system for the principal faulting and folding.

Respectfully submitted.

A. H. STORRS, *Consulting Engineer.*

SCRANTON, PA., *December 18th, 1907.*

Mr. BRANDEIS. Then, I will be relieved from calling special attention to particular passages in the report.

The CHAIRMAN. I think, Mr. Brandeis, that you should have a little mercy on the committee after we have admitted it and not read it all.

Mr. BRANDEIS. I have just indicated my appreciation of the ruling of the committee.

Mr. STEELE. In whose charge will that be?

Mr. BRANDEIS. It will be put in charge of the clerk of the committee.

Mr. STEELE. It will be kept carefully?

Mr. BRANDEIS. I presume so. All of the very valuable papers are placed in the hands of the clerk of the committee.

The CHAIRMAN. That is filed with the committee, Mr. Steele, and will be printed as part of the record. The original will be returned to you after the stenographers get through with it and make copies of it, etc.

Mr. BRANDEIS. Mr. Steele, is it not a fact that in addition to these claims which have been referred to in evidence that the officers or employees of the Alaska syndicate are interested in other of the coal properties in Alaska?

Mr. STEELE. Not that I ever heard of.

Mr. BRANDEIS. Have you ever heard of Willis E. Moore, agent of the Alaska Steamship Company at Juneau, Alaska, and that he and his associates controlled the Wells group of coal claims on Admiralty Island.

Mr. STEELE. That is the first time I have ever heard of it.

Mr. BRANDEIS. Do you know of Mr. E. N. Siegley, the purchasing agent of the Copper River and Northwestern Railway Company, an important owner of the Stracey group of coal claims?

Mr. STEELE. No.

Mr. BRANDEIS. And do you not know that the gentlemen associated with the Alaska Central Railway Company, who have been referred to in connection with the testimony of Mr. Birch—

The CHAIRMAN. Is there any testimony, Mr. Brandeis, that those gentlemen own those claims?

Mr. BRANDEIS. I can produce it if the committee desires it.

The CHAIRMAN. You are assuming in your question that they do.

Mr. BRANDEIS. I am, necessarily, and I am asking him about it.

Mr. COLTON. Mr. Brandeis, you mean William B. Newel?

Mr. BRANDEIS. Yes; William B. Newel.

Mr. STEELE. I never heard of any of these men being interested in the Alaska syndicate.

Mr. BRANDEIS. Do you know who is interested in the syndicate? You have testified that you did not know.

Mr. STEELE. I told you I knew so far as the Guggenheims were concerned, unless they have secured some subparticipation together with J. Pierpont Morgan & Co.—I do not know.

Mr. BRANDEIS. You do know who are the officers and important persons connected with the Guggenheim properties in Alaska?

Mr. STEELE. I do not know.

Mr. BRANDEIS. Do you know who the important persons connected with the corporation in Alaska are?

Mr. STEELE. I think I know who is the president.

Mr. BRANDEIS. Is not the purchasing agent a very important person?

Mr. STEELE. He might be, but I don't have charge of that, you know.

Mr. BRANDEIS. I know. I say you do not know?

Mr. STEELE. No; I do not know.

Mr. BRANDEIS. Have you not heard that those gentlemen interested in the Alaska Central Railroad control the Watson group of 64 claims?

Mr. STEELE. No, sir.

Mr. BRANDEIS. Have you any knowledge of the matters inquired about of Mr. Birch as to the J. P. Morgan & Co.'s interest with the Sovereign Bank of Canada and the Alaska Central Railroad Company?

Mr. STEELE. Not the slightest.

Mr. BRANDEIS. That is a matter which in no way would come to your knowledge?

Mr. STEELE. No, indeed; not the slightest.

Mr. BRANDEIS. Now, Mr. Birch volunteered yesterday some important matters that you had testified to before the Territories Committee—that the matters you had testified to had acquired undue newspaper publicity. I asked him whether it was not a fact that he or you, or some one representing you, or the Alaska syndicate, had taken special pains to prepare and submit to the newspapers a statement of the facts that you desired to have appear, and he denied or disclaimed all knowledge in regard to that matter. Have you any knowledge in regard to that matter?

Mr. STEELE. I have.

Mr. BRANDEIS. What is it?

Mr. STEELE. I prepared a statement of what our evidence before the Senate Committee on Territories was to be, and when I got to Washington I gave it to some newspaper reporters and asked them to put it in all the newspapers that they could.

Mr. BRANDEIS. Did not Mr. Birch have any knowledge as to what you were doing in this respect?

Mr. STEELE. I do not think so. He might have known of it, but I can not say about that positively.

The CHAIRMAN. Were you trying to boom the stock of the concern?

Mr. STEELE. No, sir; it has no stock. From the time this enterprise started there has been the subject of gross abuse and misrepresentation before the committees of Congress and in the newspapers and every place; that seems to be the favorite argument of any man going before this Congress with schemes in Alaska, to abuse the Guggenheims, saying that they are gobbling up Alaska and closing the markets of the world to them, or they are not building a railroad in good faith. And then this last fall there began a series of attacks in magazines and newspapers upon the Guggenheims, accusing them of being in some corrupt bargain or arrangement with Secretary Ballinger; accusing them of attempting to commit fraud, and accusing them of stealing all the coal lands in Alaska. We have had no opportunity of making any reply to this at all until Mr. Wickersham made his statement before the Senate Committee on Territories.

Senator ROOT. You mean the Alaskan Delegate?

Mr. STEELE. The Alaskan Delegate; yes, sir; I do not mean the Attorney-General.

The CHAIRMAN. I remember the statement.

Mr. STEELE. It was summed up in this way in the newspapers. This is a Washington newspaper dated January 13, 1910 [reading]:

Sensational charges regarding the power of the Guggenheim interests in the Territory of Alaska are revealed in the published record of recent hearings before the Senate Committee on Territories. James Wickersham, Delegate from Alaska, made the assertions before the committee.

Discussing a railroad bill, which he said had been urged in Congress, Delegate Wickersham asserted:

"I want government aid given to railroads in Alaska in the proper way; but I do not propose to see the coal interests in the Territory of Alaska turned over bodily to the Guggenheims if I can prevent it. We are almost in their power now. They have all the fish in Alaska. They have all the railroad and steamboat transportation in Alaska. They have practically all the resources of Alaska now, except coal, and I do not want them to get the coal, and I do not want them to obtrude themselves in our legislative body and get our government as well as our natural resources. For that reason I speak to you plainly as I do, because it is not pleasant to talk in that way; but I know the fact, and I am responsible for my statement."

Now, we will have to appear from time to time, I take it for granted, before the committees of Congress with regard to the railroad. We have one bill, I think, which has been passed, authorizing us to construct a bridge, and I think there is another bill pending before the appropriate committee for exemption from taxation and relief from taxation, which has been granted to every railroad enterprise in Alaska, I believe, so far.

Now, with this statement coming from Mr. Wickersham, it could not help but that the Senate Committee on Territories and the Members of Congress would be prejudiced, and naturally prejudiced,

against us if we allowed that to go unchallenged, and it was for that reason that we asked to be allowed to appear before the Senate Committee on Territories and show exactly what we had.

If you will allow me to sum up in one minute, so far as the fisheries were concerned, the Northwestern Commercial Company, in which we own 46 per cent of the stock, owned what was called the "Northwestern Fisheries." The annual pack of that company was 300,000 cases; the total annual pack of Alaska was 2,300,000 cases. So much for the fisheries.

We owned—we do not own, but we have an interest, through the interest of the commercial company's stock in the Alaska Steamship Company. That line operates 12 boats. The testimony shows that there were about 5 or 6 independent lines and tramp steamers operating about 28 boats. So much for the steamship business.

We own one railroad and one line which is being constructed——

The CHAIRMAN. That is the Copper River road?

Mr. STEELE. That is the Copper River and Northwestern. We never went to the Government for any special legislation, for any aid in the way of concessions, money, land grants, or anything else; we never issued a bond or a share of stock to the public, but every dollar for that enterprise has been put up by these gentlemen out of their own pockets.

The CHAIRMAN. You have not peddled any stock among the people?

Mr. STEELE. Not a share; we own it.

The CHAIRMAN. And you secured your right of way for that road through the general right of way laws pertaining to Alaska?

Mr. STEELE. We secured our right of way through the general laws. It seems to me it is a position hard to understand why when you find some men not only with the money but with the courage to invest millions of dollars in Alaska, where the return is bound to be in the future, and quite far in the future probably, and where the returns can only come from the development of Alaska, to find that that enterprise meets with objections, meets with abuse, meets with misrepresentations almost every place it goes. I can not understand it.

I think whatever aid this Congress can properly give it, whatever encouragement it can properly give, ought to be given. So far as I know it is the only bona fide railroad enterprise in that part of Alaska. Now, that is our railroad, the only one in which we have any interest, and which we built ourselves entirely with our own money.

We have one copper mine which was bought from the owners, for which we paid about \$3,000,000. That is all the copper we own. We have no interest in any coal land in Alaska, except the interest that we may have under this agreement which has been introduced in evidence.

Now, it was for those reasons that I asked to appear before the Senate Committee on Territories, so that we might give them the facts, so that they would understand that we are not gobbling up Alaska; we are not attempting to commit any fraud or do any wrong, or prevent anyone else from coming in there and building railroads, or doing anything else to develop the country.

If you will let me quote the remarks of the President, as published in the newspaper a few days ago, I will do so. He said:

I am not afraid of the people of the United States. They are fair; and when you go to them and present to them the facts and invite them to do justice, they will do justice. The trouble is in getting to them the facts.

Now, that has been our trouble, to get to the official bodies of Congress the exact facts regarding our enterprise, and that was the reason that we went before that committee.

The CHAIRMAN. Now, how many miles of road have you built up there?

Mr. STEELE. One hundred and two.

The CHAIRMAN. And how much has that cost you?

Mr. STEELE. That has cost now a little over \$10,000,000.

The CHAIRMAN. And that has wholly been advanced by the syndicate?

Mr. STEELE. Every dollar of it.

The CHAIRMAN. You have not sold any bonds or issued any stock?

Mr. STEELE. We have not sold any bonds or issued a share of stock.

The CHAIRMAN. It is your own money?

Mr. STEELE. It is our own money.

The CHAIRMAN. How many miles more have you got to build before you can get up to that copper, get up to the Bonanza mine?

Mr. STEELE. About 97 miles.

The CHAIRMAN. What will be the probable or estimated cost of that?

Mr. STEELE. About \$5,000,000.

The CHAIRMAN. Five million dollars more?

Mr. STEELE. Five million dollars more.

The CHAIRMAN. So that before you can get up to the copper mine you will have to spend \$15,000,000?

Mr. STEELE. Yes, sir.

The CHAIRMAN. Now, when you get up on the Copper River road to the mouth of the Chittyna, is not that the most feasible and direct route from there over to the head of navigation on the Tanana River?

Mr. STEELE. Yes, sir.

The CHAIRMAN. And that would be the only railroad that we could get in Alaskan territory that would connect us with navigation on the Yukon?

Mr. STEELE. That is my understanding. If I may say so here, it is our plan and intention, as the thing develops, to build the road up farther, not to stop at Chitina, because that would not pay. While the ore in that copper mine is rich, there is a small amount of it—a very small amount of it—there.

The CHAIRMAN. You plan ultimately to build to the head of navigation on the Tanana River?

Mr. STEELE. We expect to go up there. That is where we expect to make the road most profitable, when we can settle that country with agricultural communities, people who will come in there and become settlers.

The CHAIRMAN. In the Copper River Valley?

Mr. STEELE. I think the valley is called the——

The CHAIRMAN. And the Tanana Valley?

Mr. STEELE. The Tanana Valley and the Chitina Valley.

The CHAIRMAN. And the Chitina is where your copper mines are—that is a branch of the Copper River?

Mr. STEELE. Yes; but it goes beyond that, quite a distance beyond that.

Mr. GRAHAM. Mr. Steele, from your point of view, I suppose, you think the best interests of Alaska and of the Alaskans would be to give the syndicate a practical monopoly of the great mineral properties that are there?

Mr. STEELE. Not at all.

Mr. GRAHAM. You spoke of a copper mine you own. You did not mean that as you said it, did you—that you have but one copper mine?

Mr. STEELE. Yes, sir.

Mr. GRAHAM. Haven't you other copper mines there?

Mr. STEELE. No, sir.

Mr. GRAHAM. Is not what you call the Bonanza mine a large series of copper properties?

Mr. STEELE. Oh, I misunderstood your question. We call that the Mines Company, the One Mine Company. There are several claims in that. I think they are stated in Mr. Birch's testimony before the Committee on Territories.

Mr. GRAHAM. Do you yourself know in any way how many there are?

Mr. STEELE. I do not know how many claims there are in that property.

Mr. GRAHAM. And your purpose in building the Copper River Railroad is really to penetrate that copper field?

Mr. STEELE. That is one purpose.

Mr. GRAHAM. And the main one?

Mr. STEELE. I can not say that, because I do not believe——

Mr. GRAHAM. What other purpose is there that would compare with that one in importance?

Mr. STEELE. There is this purpose: Our first idea is to get there, and then if we get transportation other people will come in there. There are large quantities of copper owned by various people, and when we get transportation in there these people will develop their property. That is one thing, and an important thing. Then we hope, and I say that is where we expect, to make the road a permanently paying investment by having the country beyond that settled, by having people, together with their families, come in there and live in it.

Mr. GRAHAM. Those others who would develop copper properties there would practically develop them subject to your control, would they not?

Mr. STEELE. I can not understand why.

Mr. GRAHAM. Would they have any railroad connecting with the coast but yours?

Mr. STEELE. No; not unless another road should be built.

Mr. GRAHAM. Would they have any means of transportation in reaching the coast but yours?

Mr. STEELE. No.

Mr. GRAHAM. At present they practically have no means of reaching smelters anywhere except through your property, have they?

Mr. STEELE. That is quite right.

Mr. GRAHAM. And when they did reach a smelter, it would be your smelter, would it not?

Mr. STEELE. Why, no.

Mr. GRAHAM. Where are there any others than yours in that part of the country?

Mr. STEELE. We have no smelters there.

Mr. GRAHAM. But you have them at other places where you bring your copper to, do you not?

Mr. STEELE. We have one smelter at Tacoma.

Mr. GRAHAM. Where else have you one?

Mr. STEELE. I do not think there is any other smelter there.

Mr. GRAHAM. Where is there another one west of the Rockies?

Mr. STEELE. I could not tell you; I can tell you this, that the International Smelting and Refining Company, I think it is called, is a company incorporated some two years ago by Mr. Ryan and Mr. Cole and his associates.

The CHAIRMAN. What smelter, and where would that copper go if you did not take it away?

Mr. STEELE. It couldn't go any place.

Mr. GRAHAM. If it didn't go any place it would be there for future use, would it not?

Mr. STEELE. If it didn't go anywhere it would stay there permanently, I suppose, until some one took it out.

Mr. GRAHAM. It would be there, though?

Mr. STEELE. Yes. May I answer your question a little further?

Mr. GRAHAM. You were not answering it when you ceased talking, but you may go on.

Mr. STEELE. If I was not answering it was because I did not understand it.

Mr. GRAHAM. You were answering another question, but I do not mind that.

Mr. STEELE. If I was not answering your question it was because I did not understand it. There was this in regard to having control there: I understand that—this is simply on information, because I have never been there myself—that a number of these other properties, copper properties, are within a distance of 15 or 20 miles of the place on the Chitana River, where our road will go by the end of this season. All these properties could either build spurs to our roads themselves and deliver their ore and materials there, or if the inducement was sufficient, that is to say, if they could offer sufficient tonnage, we could build spurs ourselves. We have to give these people exactly the same rates that we charge our own mines and exactly the same service.

Mr. GRAHAM. Was it not your contention, urged a little while ago, and is it not still your contention, that the Interstate Commerce Commission has no right to fix rates on your line in Alaska, and if you succeeded in that contention would you not be at liberty to charge any independent copper miner such freight rates as you choose, even to the extent of prohibitive rates?

Mr. STEELE. Certainly not.

Mr. GRAHAM. Why not?

Mr. STEELE. Because the rates there are subject to regulation by the Interior Department as it now stands.

Mr. GRAHAM. And that is the way you would prefer to have it continue, as I understood you awhile ago?

Mr. STEELE. Yes; and I wish to tell you why. The reasons are these: In the first place, the change in a published tariff, I am told, can be gotten very much more quickly from the Department of the Interior than when we have to go before the Interstate Commerce Commission.

Mr. GRAHAM. And more satisfactorily, too?

Mr. STEELE. I do not know. If you mean by more satisfactorily that any influence of any kind, improper or otherwise, could be used upon the Department of the Interior, I wish to submit that I do not think your question is fair.

Mr. GRAHAM. You would rather deal with one man than with Congress; that is what I mean—is that not true?

Mr. STEELE. One man than with Congress?

Mr. GRAHAM. Yes.

Mr. STEELE. I should say so. I understood that this was between the Interstate Commerce Commission and not Congress.

Mr. GRAHAM. The Interstate Commerce Commission does what Congress directs it to do.

Mr. STEELE. Yes. But I understand you file your rates with the Interstate Commerce Commission and the Interstate Commerce Commission passes upon them.

Mr. GRAHAM. Then let me adopt your thought. You would rather deal with one man than with three?

Mr. STEELE. Yes; you can get more speedy action. There is one other reason, which is a more material one. The one which I have mentioned is merely a question of time. As I have already said to the committee, our hope of making that road a paying investment is by having the country developed, by getting permanent settlers there. We have no land grants, we have nothing, and no way by which we can offer inducements to settlers to come in. We can not give them land, and the only thing that we can give them is reduced transportation for themselves and their families and their stores and materials and supplies.

Now, if the interstate-commerce act is held to apply to Alaska, so far as intrastate traffic is concerned, you can make no distinction, you can not go there. If, on the other hand, it is subject to the Department of the Interior, then you may go—at least I know of it having been done, and I suppose it can be done—you can go before the Secretary of the Interior, submit your case and the reasons for it, and ask that you be allowed to give settlers such and such rates, which rates would be lower than the ordinary rates for transportation.

Mr. GRAHAM. Now, do you think it would be a practicable business proposition for any other company to build their lines from the coast to the copper region in the interior with yours already in operation there?

Mr. STEELE. I do not exactly understand what you mean by a practicable business proposition. Do you mean whether it would be profitable?

Mr. GRAHAM. Yes.

Mr. STEELE. I do not see where ours is going to make any profit.

Mr. GRAHAM. You do not think that in all probability it would be done, at least in the near future?

Mr. STEELE. I am not quite sure it would not. I know if anybody wants to come and buy our road and pay us our investment in it they will get it.

Mr. GRAHAM. Can you answer the question that Mr. Birch could not answer yesterday, as to the per cent of traffic which your boats carry from the States to Alaska, not taking into consideration freight carried by the Vancouver lines.

Mr. STEELE. No, I can not; only in this way: I remember last December—

Mr. GRAHAM. Well, tell us as quickly as you can—I do not think the committee wants to spin it out too long. Be as brief as you can.

Mr. STEELE. I am trying to; I will try to, but I can not say it to you without saying it to you.

Mr. GRAHAM. You did not succeed very well in your last effort to be brief, but you can try again.

Mr. STEELE. No, I did not think I did. That was meant to be explicit. A large portion of the freight and traffic that is carried by our steamers—I call the Alaska-Pacific Steamship Company our steamers—is furnished by the Alaska syndicate; the material that is sent in there, the men that go up there. Outside of that, my information is that applied, to a year ago. I do not know what it is now. We did not get what we consider a fair share of the other traffic of the outside business.

Mr. GRAHAM. Well, the point of the question was if you could?

Mr. STEELE. I can not.

Mr. GRAHAM. If you could help Mr. Birch's answer?

Mr. STEELE. I can not.

Mr. GRAHAM. He was in doubt whether you carried about 50 per cent of the traffic or not. Can you be more explicit than he was?

Mr. STEELE. Only to this extent, that it is my impression, outside of the traffic we furnish ourselves, we do not get as much of the other business as the other lines do.

Mr. GRAHAM. You have no taxes on your fishery industry there at all now?

Mr. STEELE. I do not know.

Mr. GRAHAM. Well, you know you got a substitute measure by which you were supposed to distribute certain fry—fish fry, small fish—which is in lieu of taxation.

Mr. STEELE. I know nothing of the sort. It appears before the Senate Committee on Territories that there has been such a measure, but I know nothing of it. I never heard of it before that time.

Mr. GRAHAM. There was another railroad about which something was said yesterday—the Skagway line. Have you not an indirect interest in that?

Mr. STEELE. No.

Mr. GRAHAM. Who is the chief executive officer of that line?

Mr. STEELE. I do not know, except what I heard yesterday.

Mr. GRAHAM. You know Mr. Graves?

Mr. STEELE. Yes; I know Mr. Graves.

Mr. GRAHAM. Do you know that he is interested, indirectly, at least, in the syndicate?

Mr. STEELE. Undoubtedly.

Mr. GRAHAM. The Close Brothers, of London, are heavily interested in the syndicate property, are they not?

Mr. STEELE. I do not know in what proportion the subparticipation that was given to those gentlemen was divided between them; between Mr. Heney, Mr. Graves, and Close Brothers.

Mr. GRAHAM. He is the personal representative of the enterprise out there?

Mr. STEELE. I do not know.

Mr. GRAHAM. And he is the controlling influence in the line from Skagway to White Pass and the upper Yukon?

Mr. STEELE. I have no information on that at all.

Mr. GRAHAM. You do not know?

Mr. STEELE. No.

Mr. GRAHAM. The other railroad, the third railroad from Seward to the Matanuska field, is not a live business proposition, is it, or do you know?

Mr. STEELE. I do not know.

Mr. GRAHAM. Would it be true, as far as you know, that the Copper River road and the Skagway road—I have forgotten the name of it—are the two live railroads of Alaska?

Mr. STEELE. Well, I think there is a small railroad called the Tanana Valley Railroad; I do not know exactly where it is.

The CHAIRMAN. It is up at Fairbanks and Chena, on the Tanana River.

Mr. MADISON. It only runs out——

The CHAIRMAN. It runs from there out to the mines, 25 or 30 miles.

Mr. MADISON. Those are the gold fields?

The CHAIRMAN. There is no coal there.

Mr. MADISON. Gold fields, I say.

Mr. GRAHAM. The Copper River is the only one in existence and the only one that is likely to be in existence which taps the copper country?

Mr. STEELE. That particular portion of the copper country there; yes, sir.

Mr. GRAHAM. Is there any portion nearer to any other railroad?

Mr. STEELE. I do not know. I was only limiting myself, because I do not know where the copper deposits are. I have no knowledge on that point at all.

Mr. GRAHAM. And at the present time the syndicate is the only concern that is in a practical situation to handle copper, to mine it, and to get it to the seaboard and transport it to the smelters?

Mr. STEELE. It is not in that situation yet. It is hoped it will be by the end of this season.

The CHAIRMAN. After you have built the 96 additional miles?

Mr. STEELE. Yes, sir; and after we have built the other bridge across the river.

The CHAIRMAN. Between the Childs Glacier and the other glacier?

Mr. STEELE. Yes.

Mr. GRAHAM. You or Mr. Birch stated before the committee of the Senate that you hoped to have it in that condition by next November.

Mr. STEELE. Next November, at the close of the season.

Mr. GRAHAM. The syndicate will be in a position to handle that copper; mine it, transport it to the seaboard, and take it away to where their smelters are?

Mr. STEELE. The syndicate has no smelters.

Mr. GRAHAM. Well, the Guggenheim part of it has?

Mr. STEELE. Yes, sir.

Mr. GRAHAM. How many?

Mr. STEELE. Oh, I couldn't tell you.

Mr. GRAHAM. Well, who beside them has any smelters west of the Rocky Mountains?

Mr. STEELE. I can not tell; I have no information about it.

Mr. GRAHAM. When the road is built and in operation, would they not have a practical monopoly of the copper business of Alaska?

Mr. STEELE. Why, undoubtedly, you mean the reduction of the copper?

Mr. GRAHAM. I mean mining the copper, reducing it in the smelters, and transporting it?

Mr. STEELE. No, sir; I should not think so.

Mr. GRAHAM. Why would you not think so?

Mr. STEELE. I can not see why they should.

Mr. GRAHAM. Who would their competitors be?

Mr. STEELE. If other people owned copper mines up there, I do not see why they could not produce the copper, if they get the transportation.

Mr. GRAHAM. Can you answer and eliminate those "ifs." I mean if there were a railroad up there, and if the other things do not occur, then they would have a monopoly up there, would they not?

Mr. STEELE. Let me make that clear. What I am trying to say is this, that there is nothing to prevent people or corporations—after a railroad is complete, to prevent people or corporations, holding copper properties in that section—from developing their properties and mining and producing their ore.

Mr. GRAHAM. Nothing, except as you said awhile ago, that to build railroads in there and do those things would not be a good business proposition. You said that, did you not?

Mr. STEELE. Oh, no. You asked me whether I thought it would be a good business proposition for another railroad to be built up alongside of ours, and I said certainly not. I do not think there is now traffic enough for ours for a great many years to come.

Mr. GRAHAM. Under the circumstances which will soon exist there, with the railroad developed and the other things, it would be very desirable as a business proposition for the syndicate to own the coal of Alaska, would it not?

Mr. STEELE. You mean all the coal?

Mr. GRAHAM. Well, the Bering fields, anyhow.

Mr. STEELE. Certainly not. We do not want to own the Bering fields. If the syndicate can get coal for its own operations—I mean the operations of its road—that is all it wants. The syndicate does not want to go in the mining business.

Mr. GRAHAM. Do you know how many millions of tons there were covered by the contract made with Cunningham?

Mr. STEELE. I only know from what has been stated, that that property is supposed to contain.

Mr. GRAHAM. What is your recollection about that?

Mr. STEELE. The property is supposed to contain 50,000,000 tons.

Mr. GRAHAM. Only 50,000,000 tons?

Mr. STEELE. Yes; I think so. Those claims, the Cunningham claims.

Mr. GRAHAM. You have not figured on it? You do not know a great deal about coal production?

Mr. STEELE. I do not know anything about coal production in Alaska. I know something about coal production in West Virginia.

Mr. GRAHAM. If you do not know about the figures there, I do not want to take the time of the committee asking you about what you do not know.

The CHAIRMAN. In connection with the testimony that he gave in reference to this matter of railroad transportation, and the regulation by the Interstate Commerce Commission and the Secretary of the Interior, I want the following from the act of May 14, 1898, entitled "An act extending the homestead laws and providing for right of way of railroads in the district of Alaska, and for other purposes," inserted. I will quote it here [reading]:

That all charges for the transportation of freight and passengers on railroads in the district of Alaska shall be printed and posted, as required by section 6 of an act to regulate commerce, as amended on March 2, 1889, and such rates shall be subject to revision and modification by the Secretary of the Interior.

I want that paragraph inserted in connection with this testimony.

Senator PURCELL. Mr. Steele, you have spoken of different interests—can you tell us how they feel toward giving Alaska a territorial form of government?

Mr. STEELE. I know nothing about that; we have never discussed it.

Senator PURCELL. You have never discussed it?

Mr. STEELE. No, sir.

Mr. JAMES. Did you state that a bill was pending before Congress to exempt this Copper River Railroad from taxation?

Mr. STEELE. Yes.

Mr. JAMES. Who introduced that?

Mr. STEELE. I do not know; I think it was introduced by Senator Smoot, but I am not positive about that.

Mr. JAMES. Has it passed either House?

Mr. STEELE. I do not think so.

Mr. JAMES. Exempting them from all taxation, does it?

Mr. STEELE. Oh, no; for a period of five years, as I remember it, during the process of construction.

The CHAIRMAN. I want to say to Mr. James that there are several little roads in Alaska, and they have all come before Congress asking for a limited exemption from taxation for a few years, while they were building and at the beginning of the enterprise, but only for a limited period. My recollection is that in no case has it exceeded five years.

Mr. STEELE. Five years I think is right.

The CHAIRMAN. And only intended to cover the period of construction and the early days of operation.

Mr. JAMES. Does this particular bill relative to the Copper River Railroad Company provide that it shall be exempted from taxation for a period of five years, or until the railroad is constructed—which is it?

Mr. STEELE. I think it is for a period of five years; I have not seen the bill.

Senator PURCELL. A period of five years after completion.

Mr. JAMES. Five years after completion?

Mr. STEELE. I do not think so; I have not seen the bill. I would not like to state positively.

Senator PURCELL. Five years after completion.

Mr. JAMES. Is that the provision of it?

Mr. STEELE. It ought to be for a good deal longer time than that, but I think that is the time that has usually been granted to railroads.

Mr. MADISON. Five years after the railroad is completed?

Mr. STEELE. I do not know whether it is five years after, or five years from the date of the bill; I am not sure about that, Mr. Madison.

Mr. JAMES. They might be a long time completing it if you exempted them for five years after completion.

Senator PURCELL. It is a fact that many of the railroads in our country are built on land grants and built much easier than that.

Mr. GRAHAM. There is nothing wrong in that.

Mr. JAMES. I have no doubt that your syndicate needs help.

Mr. STEELE. We do.

Senator SUTHERLAND. May I ask you a question or two about this copper? Do you know how extensive the copper belt is in that country?

Mr. STEELE. Only to this extent, that I have been informed by the engineer that the claims we own, the copper mines there known in a general way as the Bonanza mines, are very small in extent, as compared with the copper belt.

Senator SUTHERLAND. It is extensive copper-bearing country?

Mr. STEELE. Very extensive, I understand; yes, sir.

Senator SUTHERLAND. Do you know how many acres your claim covers?

Mr. STEELE. I think that is stated in Mr. Birch's testimony before the Committee on Territories.

Mr. GRAHAM. Thirty-two hundred and some acres, is my recollection.

Senator SUTHERLAND. Three thousand two hundred and forty.

Mr. STEELE. The entire group; yes, sir.

Senator SUTHERLAND. I presume that the mines in Alaska are the same as they are elsewhere. A comparatively small proportion of the 3,200 acres would be copper bearing.

Mr. STEELE. Yes, sir.

Senator SUTHERLAND. I presume the condition is the same there as elsewhere in mining countries, that the best proportion of the acreage is waste land.

Mr. STEELE. Yes, sir; waste land, so I am told.

Senator SUTHERLAND. What is the form of the deposit?

Mr. STEELE. As I have been told by the engineers, the situation is quite unusual. The grade of the copper in this particular basin is something like 67 or 70 per cent of copper.

Senator SUTHERLAND. Very high grade.

Mr. STEELE. A very high grade, yes, sir. There are, as I understand it, walls of rocks around it so that the deposit is really right there in a basin.

Senator ROOT. In a pocket.

Mr. STEELE. Yes, sir, a pocket—rather a large pocket.

Senator SUTHERLAND. It is a vein, and not the case where the rock is impregnated.

Mr. STEELE. That is the situation as I understand it.

Mr. GRAHAM. A sort of a cul de sac.

Mr. STEELE. Something of that kind; yes, sir.

Senator SUTHERLAND. So that when you take out a deposit of copper that is inclosed by the walls of actual rock you have got everything in value.

Mr. STEELE. Everything, unless something else is discovered on these other claims; yes, sir.

Senator SUTHERLAND. Is not a deposit such as, for example, the Utah Copper Company has, where the entire country is impregnated?

Mr. STEELE. It is not that kind of copper at all. You understand, of course, I am speaking, not of my own personal knowledge, but what I have been told in regard to that, because I am not a copper engineer.

Senator FLINT. Has any other member of the committee any questions to ask?

Mr. BRANDEIS. Mr. Chairman, I think it is just forty-three minutes since I put a question which has not been answered, and that was the question in regard to Mr. Birch's knowledge of this plan of publicity through the newspapers, about which he disclaimed any knowledge yesterday.

Mr. STEELE. I thought I had answered that.

Mr. BRANDEIS. No; I think not.

Mr. STEELE. Well, I will try. My recollection is that Mr. Birch did not know about that. He may have, but I am not sure about that.

Mr. BRANDEIS. I want to call your attention to the fact, Mr. Steele, that this statement purports to set forth definitely what Mr. Birch testified to.

Mr. STEELE. Yes, sir.

Mr. BRANDEIS. Do you think you undertook to state in this statement for distribution among the press what Mr. Birch would testify to, without knowing that you were going to do it?

Mr. STEELE. Undoubtedly, for this reason, that two or three days before we appeared before the committee I had a talk with Mr. Birch and told him exactly the line of questioning on which I would proceed, and got his answer to what he would state, and it was from that that I prepared it. And I will state further that I do not know whether or not Mr. Birch actually saw it. I can not answer as to that.

Mr. BRANDEIS. Can you tell me whether this handwriting in this paper which is entitled "To be released on Friday, the 17th, at 11 o'clock, or as soon thereafter as John N. Steele and Stephen Birch give testimony before the Senate Committee on Territories," whether the pencil handwriting filling up the data at various places of matters as to which Mr. Birch had testified to you, whether that is in Mr. Birch's handwriting or in yours; or if not, in whose?

Mr. STEELE. It is in neither of ours. It is not in mine, and I am quite sure it is not Mr. Birch's.

Mr. BRANDEIS. Can you tell me whose it is?

Mr. STEELE. No, sir.

Mr. BRANDEIS. Was there anybody else assisting you in making that memorandum and its distribution?

Mr. STEELE. Yes, sir; there was somebody assisting me.

Mr. BRANDEIS. The chairman has suggested that you do not have any publicity bureau. Was it a publicity bureau that assisted you?

Mr. STEELE. No; it was not a publicity bureau; it was a sporadic or solitary attempt to get the facts in the case before the public.

Mr. BRANDEIS. Not through a publicity agent?

Mr. STEELE. Well, I do not know whether you call the reporters publicity agents or not.

Mr. BRANDEIS. Who did this work, who assisted you, and whose handwriting is that?

Mr. STEELE. I do not know whose handwriting that is.

Mr. BRANDEIS. In answer to the question of Mr. Graham in regard to the monopoly as to which he questioned you, with a view to pointing out the monopoly which the Alaska syndicate would acquire through the possession of the railroad and the only railroad up to the copper country, you answered that others could get railroad transportation at the same rates if they developed their properties along the line of the railway. Now, is it not a fact, Mr. Steele, that even if they got transportation at just the same rate it would be a very unequal contest, since you could charge your copper companies anything you liked, because if they got high transportation on copper it would mean merely larger dividends or a larger return to the railroad company?

Mr. STEELE. Why, no, sir.

Mr. BRANDEIS. Would it not equalize itself if you owned both the copper company and the railroad company and they were both owned by the syndicate; would it not be entirely immaterial to you, the owners of that syndicate, whether it would be high or low transportation?

Mr. STEELE. You overlook the fact, Mr. Brandeis, that under the law the rates there are subject to the regulation of the Interior Department at present, and if the Interstate Commerce Commission shall hold that it has jurisdiction, then the rates are subject to its regulation.

Mr. BRANDEIS. Now, do you not recognize also, and has not Congress recognized the fact, that even in the United States with the existence of railroad transportation controlled by the Interstate Commerce Commission, so far as they are able to control it, that the public interest demands a separation from the railroad of the ownership of the articles which are to be carried on that railroad. Is not that a fact?

Mr. STEELE. I would like you to speak with regard to the specific thing. I understand perfectly what the Supreme Court decided in the commodities case.

Mr. BRANDEIS. I am not asking about what the Supreme Court decided, but about the legislation which Congress passed in regard to the commodities.

Mr. STEELE. I am familiar with the Hepburn Act also.

Mr. BRANDEIS. Well, now, what is the basis of that provision in the Hepburn Act?

Mr. STEELE. I would like to look at it.

Mr. BRANDEIS. What is the reason for it?

Mr. STEELE. I would like to look at the act to see the exact provision.

Mr. BRANDEIS. Well, you know its general nature, do you not?

Mr. STEELE. Oh, yes; if you will allow me to answer generally and won't hold me down I will give you my opinion.

Senator FLINT. How is that material to us?

Mr. BRANDEIS. I thought Mr. Graham particularly desired to develop that line of investigation.

Senator ROOT. It is a question of law; he can not tell them what the reason was for the legislation.

Mr. BRANDEIS. I thought I might perhaps test the accuracy, and, perhaps, even the spirit of his answers by calling attention to it, but if the committee do not desire it I will not insist upon it.

Senator ROOT. It seems to me a waste of time.

Mr. BRANDEIS. It seems to me a very important question in view of the fact that these gentlemen claim they will not get a monopoly when all the indications are that they will, and it certainly seems to be an important question. If one syndicate owns the land and one syndicate owns the railroad it is monopoly, whatever you call it.

Senator FLINT. We showed them what we thought of it by passing an act of Congress, and yet you want this witness to go on and tell why we passed this act of Congress.

Mr. BRANDEIS. I am not reflecting at all on the particular members of the committee because I am not aware that all these gentlemen participated in the legislation. I will not press the question. It seems to have brought out the point.

Senator PURCELL. Is that all, Mr. Brandeis.

Mr. BRANDEIS. That is all the questions I desire to ask until I have had an opportunity to examine correspondence that was put in.

The CHAIRMAN. Mr. Vertrees, you may proceed.

Mr. MADISON. Mr. Chairman, it is now twenty minutes past 12.

The CHAIRMAN. Mr. Vertrees may get through with the witness very soon.

Mr. STEELE. If you could stay a little longer, Mr. Chairman, so that I can get through, I will be glad, because I have been notified they want me to testify in this Cunningham coal case, and I would like to get through with it to-day if possible.

The CHAIRMAN. Mr. Vertrees, you will probably get through in a few minutes, will you not?

Mr. VERTREES. Yes, sir. Mr. Steele, I do not care to go into the question at all of your syndicate, or what you own or what you are trying to do, or what you have, further than this to ask you whether or not any officer of the Department of the Interior or the Bureau of Forestry is interested in any way to your knowledge in your syndicate?

Mr. STEELE. Not to my knowledge. I know he is not interested through the Guggenheims. I am reasonably certain they are not interested through the Morgans.

Mr. VERTREES. Particularly whether Secretary Ballinger is or not?

Mr. STEELE. Not to my knowledge; I never heard of it. I know he is not through the Guggenheims.

Mr. VERTREES. If he is interested, you never heard of it?

Mr. STEELE. No, sir.

Mr. VERTREES. You have made a statement as to the matter of regulation of rates, and you have stated, and the chairman has called attention to the law, that the power of regulation of freight rates in Alaska is given over to the Secretary of the Interior. I ask you, Mr. Steele, if you know whether or not there has for the last few years

been quite a controversy between the Interstate Commerce Commission and the Secretary of the Interior as to which did have that jurisdiction?

Mr. STEELE. Yes, sir; I understood that the question came up, I think, two years ago—two or three years ago—when Mr. Garfield was Secretary of the Interior, and at that time the majority of the Interstate Commerce Commission held that the Commerce Commission did not have jurisdiction; that that was still in the Secretary of the Interior. The question is now up—at least I have not heard it being decided—before the Interstate Commerce Commission, in the case of the Humbolt Steamship Company, I think it is, against the White Pass and Yukon road.

The CHAIRMAN. Yes; that is right.

Mr. VERTREES. Do you know whether or not the matter was taken up on the 13th day of April, 1907, in the office of the Interior Department, when Mr. Garfield was the Secretary, and that it was then ruled and determined upon the advice of the law officers of that department that the Secretary of the Interior, in view of the new act of 1906 in relation to the regulating of these matters by the Interstate Commerce Commission, did not have authority, and declined to exercise any jurisdiction—do you know that?

Mr. STEELE. I do not know that; no, sir.

Mr. VERTREES. I have, Mr. Chairman, the written opinion given by one law officer of the department on the 13th day of April, 1907, Mr. Clements, to Mr. Woodruff, who was then Assistant Attorney-General; and while the witness does not know of it, I would like to introduce it in this connection, as I have it here, with the statement that I will confirm it later.

The CHAIRMAN. Very well; it is admitted.

(The paper referred to is as follows:)

[Copy.]

NOTE.

Mr. WOODRUFF: The papers under this fastener seem to present two questions, both relating to Alaska; the first being, "Which of the terms, *Territory* or *District*, should be used in decisions and other papers prepared by this department in speaking of Alaska?" Bearing upon this question it is noted that the legislation with regard to the extension of the land laws to Alaska uniformly describe the country as the "District of Alaska." In other legislation it has been referred to as the "Territory of Alaska." If the use of the term *Territory* is to be controlled by the question as to whether *organized* or *unorganized*, I am inclined to the view that Alaska is not an organized Territory, but rather incorporated territory of the United States, as the result of the treaty with Russia and subsequent legislation which, in view of the decisions of the courts, would fully warrant its designation as the Territory of Alaska.

The real question suggested by the papers is whether the jurisdiction over common carriers in Alaska is by law vested in this department or in the Interstate Commerce Commission. The correspondence shows that the Commission has already expressed the opinion that it has jurisdiction, reference being made to the act of June 29, 1906 (33 Stat., 584), amending section 1 of an act entitled "An act to regulate commerce," approved February 4, 1887 (24 Stat., 379). As amended, said act of 1887 applies to any corporation or any person or persons engaged in the transportation of oil or other commodity, etc., and any common carrier engaged in the transportation of passengers or property, etc., "from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States . . . *Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering,*

storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory, as aforesaid."

The jurisdiction of the Interstate Commerce Commission rests upon the construction to be given the expression "from one place in a *Territory* to another place in the *same Territory*," as used in said act.

From a reading of this act I am inclined to the view that it was intended to embrace within the descriptive terms used therein all common carriers within the United States, excepting only those operating exclusively within the confines or boundaries of one of the States.

It may be that the reason for the legislation does not apply to Alaska, separated as it is from the main body of country, yet in view of the decision of the Supreme Court in *Steamer Coquitlam v. United States* (163 U. S., 346), wherein the sixth section of the judiciary act of March 3, 1891 (26 Stat., 826), making it the duty of the Supreme Court to assign the several Territories of the United States to particular circuits, was under consideration, in which the court held (page 352): "Alaska is one of the Territories of the United States. It was so designated in that order (referring to the order of this court assigning to the ninth circuit) and has always been so regarded. And the court established by the act of 1884 is the court of last resort within the limits of that Territory. It is therefore in every essential sense the supreme court of that Territory;" also the decision of the Supreme Court in the case of *Rasmussen v. United States* (197 U. S., 516), I am forced to the conclusion that as applied to the act of June 29, 1906, extending the jurisdiction of the Interstate Commerce Commission, Alaska would be held to be a Territory within the meaning of the term as used in that act, and that thereby the jurisdiction over railroads in Alaska was transferred to the Interstate Commerce Commission, notwithstanding the fact that, by section 2 of the act of May 14, 1898 (30 Stat., 409), jurisdiction has been specially vested in the Secretary of the Interior to revise rates for passengers and freights in Alaska.

Respectfully,

F. W. CLEMENTS.

APRIL 13, 1907.

Mr. VERTREES. I merely desire to call attention to the fact that Mr. Clements concludes with this statement in a few lines:

I am forced to the conclusion that, as applied to the act of June 29, 1906, extending the jurisdiction of the Interstate Commerce Commission, Alaska would be held to be a Territory within the meaning of the term as used in that act, and that thereby the jurisdiction over railroads in Alaska was transferred to the Interstate Commerce Commission, notwithstanding the fact that, by section 2 of the act of May 14, 1908 (30 Stat., 409), jurisdiction has been specially vested in the Secretary of the Interior to revise rates for passengers and freights in Alaska.

And in the same connection I would like to present, with the statement that I will confirm it, merely to keep the connection, a communication of July 3, 1909, from Mr. Frank Pierce, Acting Secretary of the Interior, and evidently, from the initials, by Mr. Clements, for below it I find "F. W. C.," to the Commissioner of the General Land Office, adhering to the same opinion as late as that, July 3, 1909. I would like to have that printed.

The CHAIRMAN. That is admitted.

(The paper referred to is as follows:)

[Copy.]

[W. S. A. E. C. F.]

D 7892.]

DEPARTMENT OF THE INTERIOR,
Washington, July 3, 1909.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: I am in receipt of your communication of June 24, 1909, transmitting for approval freight classification and freight and passenger tariff schedules of the Copper River and Northwestern Railway Company, Alaska, under provisions of the act of May 14, 1898 (30 Stats., 409).

The Interstate Commerce Commission, after the passage of the act of June 29, 1906 (34 Stats., 534), expressed the opinion that Alaska should be held to be a Territory within the meaning of the term as used in that act, and that jurisdiction over railroads in Alaska has been transferred to the commission notwithstanding the provisions of

section 2 of the act of May 14, 1898, supra, specially vesting jurisdiction in the Secretary of the Interior.

In view of the act cited and of the position taken by the Interstate Commerce Commission, this department will not at this time act upon the schedules submitted, and you will so advise the Copper River Company.

The schedules are herewith returned, and it is suggested that you place same in your files for reference should occasion arise in the future.

Very respectfully,

FRANK PIERCE,
Acting Secretary.
F. W. C.

Mr. BRANDEIS. One question that I omitted to ask.

The CHAIRMAN. I suggest that you let Mr. Vertrees finish.

Mr. BRANDEIS. Pardon me; I thought he had.

Mr. VERTREES. Not quite. As you understand it, then, the matter stands just that way at this time, with the question before the court for determination.

Mr. STEELE. I had understood that it was before the Interstate Commerce Commission itself. I may be mistaken about that.

Mr. VERTREES. For determination?

Mr. STEELE. For determination; yes, sir.

Mr. VERTREES. So it is not before the courts, but is a case pending before the commission?

Mr. STEELE. Yes, sir.

Mr. VERTREES. Well, Mr. Steele, there was a question asked you yesterday when Mr. Birch was being examined to which you made reply, or rather which you said you preferred not to reply to, and that question was whether or not you, as attorney for your people—the syndicate—or the Guggenheims considered the option agreement a valid contractual obligation that could be enforceable by law. Now before asking you that question—and I wish to state to you that I am coming to that question—it is a fact, as you understand it from your people and as they have advised you, that the railroad was transferred from Katalla over to Cordova?

Mr. STEELE. Oh, yes; the tide-water terminal was changed from Katalla to Cordova.

Mr. VERTREES. But at the time this option agreement was entered into it was in course of construction?

Mr. STEELE. It was in course of construction at Katalla.

Mr. VERTREES. And a very large sum of money had been expended in and about Katalla, both on the harbor and on the land?

Mr. STEELE. Yes, sir; that is true.

Mr. VERTREES. Is it not also true that at the very time that option agreement was entered into the counsel for Mr. Guggenheim, Judge Lindley, one of the witnesses to the option, wrote the letter which was exhibited on yesterday by Mr. Birch?

Mr. STEELE. I so understand. I have never seen the original of that. It is simply a copy.

Mr. VERTREES. Copies were furnished to you?

Mr. STEELE. Yes, sir; they were sent me from the West by Mr. Eccles, I suppose.

Mr. VERTREES. Now, does not that agreement call for the creation of a corporation? I call your attention to it, on page 2132 of the testimony.

Mr. STEELE. Yes; it does.

Mr. VERTREES. Part of the trustees to be nominated by the Guggenheims and part of the trustees to be nominated by the others, three

by each, and the six to nominate the seventh man, and that they were to bring out this company and organize it, and take certain steps, and the deed to the particular interest of the several members of the Cunningham group was to be delivered by them, respectively, in escrow, to the Bank of California, at Seattle. You understood that it called for all of those things, did you not?

Mr. STEELE. Yes, sir.

Mr. VERTREES. Now, did you not also understand that in point of fact that was never done?

Mr. STEELE. So far as the formation of the corporation is concerned I have been informed that that was never done, never started. So far as the deposit of deeds is concerned I have only heard in a general way that some deeds had been deposited, how many I do not know.

Mr. VERTREES. Now, to correct that, were they not put in the hands of a special friend or agent of these particular persons and then withdrawn before they ever got to the bank and destroyed?

Mr. STEELE. I do not know about that, Mr. Vertrees. I never heard that. I was only relying upon—

Mr. VERTREES. But you do know, do you not, Mr. Steele, that from January, 1908, Mr. Cunningham and his people took the position and insisted that by reason of those things I have mentioned, namely, that it had not been ratified and confirmed by the owners—the option had not—and that the road had been changed, as you have intimated, that the option had no binding force and effect, and they refused to recognize it. That was their position, was it not, from that time on?

Mr. STEELE. I so understood; yes, sir. I was so informed.

Mr. VERTREES. Did your people ever take any steps to enforce it, or did you make any communications to them or either of them from that time on, even to this date, insisting that it was in force as a binding contractual obligation?

Mr. STEELE. No, sir.

Mr. MADISON. You have never waived any rights under it?

Mr. STEELE. We have never done anything under it.

Mr. MADISON. And you mean that to include that you have never waived any right or claim under it?

Mr. STEELE. Precisely.

Mr. MADISON. You stand to-day on whatever legal rights that may have been conferred upon you by virtue of that contract?

Mr. STEELE. Yes, sir.

Senator PURCELL. And the other party has never taken any steps to terminate it?

Mr. STEELE. We have never been formally notified by the committee that the agreement was at an end.

Senator FLETCHER. You have done all that you were required to do under the contract on your part?

Mr. STEELE. All that we were required to do was to make an examination of the coal property within twenty days.

Mr. GRAHAM. And to exercise your option?

Mr. STEELE. And to exercise our option within the limited time. That we did. We have done nothing further since.

Mr. MADISON. Time was not made the essence of the contract, as to any material factor in it?

Mr. STEELE. There is no provision in the contract as I remember making time the essence.

Senator FLETCHER. Since then you have requested Mr. Cunningham to hurry up the patents from time to time?

Mr. STEELE. The only time that I know that I made any request was in August, 1907. I think that Mr. Birch testified that when he had seen Mr. Cunningham he had spoken to him about hurrying it up. I do not remember when that was.

Mr. VERTREES. I have not quite gotten to the question of your attitude. My questions were directed to the attitude of the adversary people—the Cunningham people. Now that we may go back to it, before I was interrupted, I wish to repeat this much, and ask you to state whether I correctly understood you to say this, that the position and contention of the Cunningham people was that the contract was not a binding contractual obligation because of the reasons which I have stated?

Mr. STEELE. Yes, sir.

Mr. VERTREES. That was their position?

Mr. STEELE. That was their position.

Mr. VERTREES. And so far as you know they have stood on that position from January, 1908?

Mr. STEELE. As far as I know; yes, sir.

Mr. VERTREES. Now, coming to your people, whatever may have been the position in your office, did you, or those you represent, Daniel Guggenheim or his syndicate, at any time since that date when you learned that that was the attitude of those people, demand of them compliance with that contract?

Mr. STEELE. No, sir.

Mr. VERTREES. Now, Mr. Steele, I will ask you the question, is that contract capable of enforcement by your people? Is it a valid contractual obligation that can be specifically performed or enforced?

Mr. STEELE. I do not like to be required to answer that question, and for this reason: We can not tell what may happen between us and these people, and we can not tell whether we will want to enforce that contract or whether we will not want to enforce it. Now, if I should say here that I did not consider that contract should be specifically enforced and we should afterwards bring proceedings attempting to enforce it, it would place us in a very unfortunate position.

Mr. JAMES. They might get another lawyer.

Mr. VERTREES. That might embarrass you to appear in that case, but there are other lawyers. You might let your partner appear in the case. You have already stated to the committee that you took no steps and that you made no demand, and the attitude of the other people was one of absolute refusal to recognize it from that day to this.

Mr. STEELE. Yes, sir.

Mr. VERTREES. And that your people have not even made a claim, much less an attempt. Now, I insist on an answer. From the facts before you, and what you know up to this time, Mr. Steele, is it not your opinion and belief that that is not an enforceable contract by any proceeding of specific performance, or, in other words, that it is of no binding force on those people?

Senator SUTHERLAND. You are asking him for an opinion on a question of law, and not of fact.

The CHAIRMAN. Mr. Vertrees, I think you ought to have a little mercy on a fellow-lawyer.

Senator PURCELL. It may affect his clients.

Mr. GRAHAM. I do not think a lawyer ought to be made to swear to his legal opinions.

Mr. STEELE. I can say this, the agreement recites that at said meeting a resolution was unanimously passed authorizing said committee, or the majority of them, to enter negotiations with parties with a view to the equipment and development and operation of the consolidated property and the sale of its products, and that this letter of Judge Lindley's of the same date as the option agreement, states that Messrs. Campbell, Cunningham & Moore think that their action taken at the conference here will be ratified here by practically all the entrymen. I can say that I can see that the enforcement of that contract specifically would meet with difficulties, but I do not think I ought to be required to go beyond that.

Mr. VERTREES. All right.

The CHAIRMAN. I think Mr. Vertrees does not want to be too hard on a fellow lawyer. Is there any more that you desire, Mr. Vertrees?

Mr. VERTREES. I think not, Mr. Chairman.

Mr. BRANDEIS. Mr. Steele, Mr. Vertrees asked whether you had ever taken any steps to enforce the performance of this contract. I ask you whether, in your opinion, there are any steps which you could have taken to enforce this contract up to the present time?

Mr. STEELE. No, sir.

Mr. BRANDEIS. Then you have done all, in your opinion, you legally could have done, have you not?

Mr. STEELE. I do not see, Mr. Brandeis, how we could do anything in the present situation.

Mr. BRANDEIS. Mr. Vertrees asked you was it not a fact that these Cunningham claimants took the position that that contract was not valid. Did they ever serve any notice on you, or ever in any formal way take any such position?

Mr. STEELE. No, sir.

Mr. BRANDEIS. Now, I will call your attention to this testimony, which you gave before the Territories Committee, on page 146:

The CHAIRMAN. So that to-day any rights that accrue or may accrue to the Alaska syndicate under this option thus taken up on December 7, 1907, still may be exercised as soon as the lands are patented?

Mr. STEELE. That is our view.

The CHAIRMAN. Well, nobody else has any other view. Does anybody else hold any other view?

Mr. STEELE. I do not know. I have seen statements in the newspapers—I do not know whether they are true or not—as coming from some of these claimants, that since the railroad was not built at Katalla, or built to Katalla, I should say, and Katalla made the terminus of the road, they considered that agreement void.

That is the information to which you referred in answering Mr. Vertrees, is it not?

Mr. STEELE. Yes, sir; but I have, Mr. Brandeis, thought over that matter since, and had my recollection refreshed by a talk with Mr. Birch. At that time I was not aware that that was coming up, and I had not looked up anything at all. I have looked over, since that time, all this correspondence.

Mr. BRANDEIS. That is, Mr. Birch told you what he had learned?

Mr. STEELE. Oh, yes; what he had learned then, and in fact, it had been told me. It did not occur to me at the time—I mean at the time I was before the Senate committee. I had been told myself by one of the claimants between May, 1908, and I think about the middle of July of the same year, practically the same thing.

Mr. BRANDEIS. He had told you then that that claim was made?

Mr. STEELE. No; one of the coal claimants, I mean, told me that their position was that they considered that contract at an end; that we had changed the terminus of our route and they had not been able to get the people together or something to that effect.

Mr. BRANDEIS. You heard that statement—

Mr. VERTREES. He did not say heard. He said the man told him.

Mr. BRANDEIS. Did he not hear what the man told him?

Mr. VERTREES. Well, you are putting it as a hearsay proposition.

Mr. BRANDEIS. I will allow you, Mr. VERTREES, if you desire, to examine the witness.

Mr. VERTREES. I will have to if you do not do it correctly.

Mr. BRANDEIS. I am glad to take instructions from you.

Mr. VERTREES. You need them, sir.

Mr. BRANDEIS. I thank you.

Mr. MADISON. I do not think that is proper, Mr. Chairman.

Mr. JAMES. Nor do I. I think it ought to be done by the chairman. I do not think it is proper for lawyers to be sparring across the table.

Mr. VERTREES. I do not think so, either. This, however, has been going on here under the guise of one thing or another—under the guise and pretense of a ruling of this committee, and the most malignant and leprous insinuations were cast against Mr. Ballinger, the Secretary, and yet the ruling of the committee was peremptory and I was not permitted to say one word in reply, and now, when the witnesses are examined all I am asking for, and I have the right to insist on that, is utmost fairness, and not have words put in the mouth of the witness in the form of a question, which everybody knows the witness did not say.

Mr. BRANDEIS. Is this a case in which the committee desires to hear argument?

The CHAIRMAN. It is not necessary to hear argument. Go on and repeat your question in the proper form. He did not say he heard something. He said he was told directly by one of the people.

Mr. BRANDEIS. If you desire to put the question, Mr. Chairman, I will withdraw mine.

The CHAIRMAN. You may repeat that question. Go on.

Mr. BRANDEIS. I have no question to repeat. If some one else wishes to put it, I am content.

The CHAIRMAN. Go on and ask the question.

Mr. BRANDEIS. Was that statement that was made to you coupled with any other statement as to what these particular gentlemen intended to do?

Mr. STEELE. Yes, sir; it was made to me by Governor Moore.

Mr. BRANDEIS. Miles C. Moore?

Mr. STEELE. I think so; I think those are his initials and his first name.

Mr. BRANDEIS. What did he say?

Mr. STEELE. He told me that the coal claimants all considered that agreement at an end; that we had changed the terminus of the road

from Katalla to Cordova, and they had not been able to get their people together, and they all considered it at an end, but said as far as he individually was concerned he would live in good faith—

Mr. BRANDEIS. Up to that agreement?

Mr. STEELE. Up to the agreement or some similar one—or make some similar agreement. I can not say that he said exactly that he would live up to that particular agreement, but he said he was going to act in good faith toward us. That was the substance of it.

Mr. BRANDEIS. Now, Mr. Steele, when Mr. Vertrees put one of his proper questions to you in regard to the construction of that railroad, giving up the railroad to Katalla, I noticed you answered it carefully, saying the tide-water terminal of the railroad was changed.

Mr. STEELE. Yes, sir.

Mr. BRANDEIS. The railroad itself still was going to Katalla, was it?

Mr. STEELE. Of what period are you now speaking?

Mr. BRANDEIS. I am referring to the question Mr. Vertrees put to you.

Mr. STEELE. I mean what period of time.

Mr. BRANDEIS. The very period as to which you answered Mr. Vertrees.

Mr. STEELE. Can you not enlighten me and let me know what date that was?

Mr. BRANDEIS. I will ask, in order that there may be no misunderstanding between Mr. Vertrees and myself, that the stenographer read the questions and answers.

Mr. STEELE. Possibly I can answer the question without going back to that.

Mr. BRANDEIS. Very well; if you can, it will save time.

Mr. STEELE. The terminal was changed at Katalla to Cordova, I think, in the fall of 1907. That was when it was determined that it was not practicable to build a breakwater at Katalla and construct a harbor. At that time it was still intended to build the railroad from the Copper River to Katalla and from Katalla up to the Bering River coal fields. That was stopped in the following spring, of 1908, when the question had arisen regarding the ability of the coal locators—any coal locators—to get title to these coal fields.

Mr. BRANDEIS. I think that has brought out very clearly what I wanted, which was, namely, that it was not an abandonment of the railroad to Katalla; but it was merely changing the terminus from Katalla to Cordova, because your experience at the port of Katalla had proven to you that the breakwater there would not give adequate harbor. Was that not a fact?

Mr. STEELE. It was a little bit more than that. Katalla had been intended to be the terminus of the road; where its shops were to be, and its coal bunkers, and everything of that sort; where the ships were to come in, and everything of that sort. That was all changed. It was moved to Cordova. The road would still come around through Katalla, but there would be nothing at Katalla in the way of terminals or anything of that sort.

Mr. BRANDEIS. And the suspension of the construction of the railroad was not due to any abandonment of Katalla as a terminus, but merely to the failure of these Cunningham claims to secure the patents at the time they expected to secure them?

Mr. STEELE. Their failure, and the failure of anyone else to get coal locations up there.

Mr. BRANDEIS. Now, I want to call your attention specifically to the statement of Clarence Cunningham in the affidavit of March 6, 1908, sworn to before L. R. Glavis. It appears on the top of page 88 of the list of documents—the chronological list. It is as follows:

The Guggenheim syndicate, which has been contemplating building a railroad to our coal fields, is not directly or indirectly interested in the said coal lands, and they have never been interested.

Then again in that same affidavit, at top of page 89—

Not only have the Guggenheim interests had nothing to say regarding our coal lands, but no other corporation has had anything to do with it. We have had no written agreement whatever with any corporation, and the only understanding which we have had is that among ourselves.

Am I right in assuming that you knew nothing whatever about that affidavit?

Mr. STEELE. Nothing at all.

Mr. BRANDEIS. At the time or before the time it was given?

Mr. STEELE. I never heard of it until yesterday.

Mr. BRANDEIS. That was the first time that you had heard of that affidavit?

Mr. STEELE. Yes, sir.

Mr. BRANDEIS. Now I call your attention—

Mr. STEELE. Let me get straight on that, Mr. Brandeis, unless perchance that affidavit had appeared previously in some of the hearings before this committee. I may have seen it then, but I have no recollection of it.

Mr. BRANDEIS. It did not impress itself on your mind that you did see it?

Mr. STEELE. No, sir.

Mr. BRANDEIS. May I call your attention to a paragraph in the affidavit of Clarence Cunningham of September 4, 1908, which Mr. Ballinger afterwards presented to Secretary Garfield, in which there appears this language:

In addition to the statements set forth in that certain affidavit made by affiant, dated the 6th day of March, 1908, before L. R. Glavis, chief field division, G. L. O., affiant further states he knows of no individual entrymen in said group of entries that has any contractual obligation of any nature whatsoever with the Guggenheim syndicate, or any other syndicate or corporation whatsoever, or any of their agents, whereby his claim or entry or any part thereof is disposed of or to be disposed of, incumbered or otherwise pledged in any sense whatsoever. ¶ ¶

Am I right, assuming that you knew nothing of that affidavit before its date?

Mr. STEELE. Oh, no, sir.

Mr. BRANDEIS. When did you first learn of that affidavit of Mr. Cunningham?

Mr. STEELE. I have been trying to think, Mr. Brandeis. I think I said in these hearings at some place, referred to in these hearings, and then I think some time before that I had seen a mention of it in newspapers and magazines, or something, but I could not tell you accurately.

Mr. BRANDEIS. Except what you may have heard in the course of this investigation, or of the discussions which preceded it, you are certain that you knew nothing of that affidavit?

Mr. STEELE. Unless I have seen some mention of it in a newspaper or magazine.

Mr. BRANDEIS. And you are sure that ex-Governor Miles C. Moore did not say anything to you about these affidavits which had been given—the one affidavit of March 6—the affidavit which had been given by Clarence Cunningham?

Mr. STEELE. No, sir; I mean I am sure that nothing was said.

Mr. BRANDEIS. You are sure that he did tell you nothing about it?

Mr. STEELE. Yes, sir.

The CHAIRMAN. Is that all you wish to ask, Mr. Brandeis?

Mr. BRANDEIS. That is all, subject to my examination of the papers.

Senator FLETCHER. Can you fix the date of your conversation with ex-Governor Moore?

Mr. STEELE. I can only fix it in this way. He happened to be in New York, and came in to see me, and we were discussing this coal-land law approved May 20, 1908; we were discussing the third section of that bill. Now, it was after that, and before the middle of July. I sailed for Europe about the middle of July of that same year, and it was some time in between; I can not fix the date. I would like to say one thing, Mr. Chairman, if I may.

The CHAIRMAN. You may say anything that you want to say here.

Mr. STEELE. I forgot to ask Mr. Birch. It was simply this, that the Alaskan syndicate had had no connection of any sort or description with these Cunningham coal claims at all until this agreement of the 20th of July, 1907, and negotiations which have been testified to by Mr. Birch as starting in April of that year; that we never paid a dollar on account of those claims, and had never had anything at all to do with them except in so far as has been disclosed here.

Mr. BRANDEIS. Mr. Steele, in connection with the search for documents which you had to make, I would like to ask you particularly, among other things, to search for these communications, telegraphic or otherwise, which preceded and resulted in the conference at Salt Lake City on July 20, 1907.

Mr. STEELE. Yes, sir.

The CHAIRMAN. Is that all?

Mr. STEELE. Mr. Chairman, may I be discharged now?

The CHAIRMAN. Yes, so far as I know; unless the attorneys want to ask you something further.

Mr. BRANDEIS. If Mr. Steele will let us know where he will be during this afternoon, I can let him know if there will be anything further.

Mr. STEELE. I would like very much to be free. I am required to give evidence for the Government, and I would like to go to Baltimore this afternoon.

Senator ROOT. You are free, Mr. Steele, as I understand it, unless there is something further that the attorneys wish to ask.

Mr. BRANDEIS. Subject to further call.

(At 1 o'clock p. m. the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled after recess at 2 p. m.

The CHAIRMAN. The committee will come to order. Have you any more witnesses, Mr. Brandeis?

Mr. BRANDEIS. Mr. Chairman, in the first place, I want to reply to Mr. Denby's request that I call his attention to the page in which he referred to my not having protested against the action of the committee.

Mr. DENBY. Yes; what page is that?

Mr. BRANDEIS. Pages 1337 and 1338 of the testimony.

Mr. Chairman, has the committee ruled upon my request that if I be not allowed to call Mr. Ballinger as a witness—

The CHAIRMAN. The committee has ruled on that.

Mr. BRANDEIS. I understand that has been ruled upon, but the other request that I made that Mr. Ballinger might be directed, if he is to testify in his own behalf, to testify now and not after other witnesses which he produces.

The CHAIRMAN. We have left your side to arrange that. Mr. Ballinger is represented here by counsel, and I think they ought to have the same courtesy extended to them as you have had.

Mr. BRANDEIS. Is that a matter which the committee has passed upon? I made a request that the committee should act upon that as soon as we learned from Mr. Vertrees that he proposed not to call Mr. Ballinger. I now request that if Mr. Ballinger is to be permitted to make a statement, or his statement, before he is subjected to examination by opposing counsel that that statement be made now rather than it be postponed until after such other witnesses as Mr. Ballinger may choose to produce. I understood that was the question which we asked you this morning, but a decision had been reserved upon that.

The CHAIRMAN. Mr. Brandeis, I understood your argument this morning to be rather more of an assault upon Mr. Ballinger than anything else.

Mr. BRANDEIS. You may have so understood it. If so, I was not very fortunate in making clear the purpose of my statement. But it was all directed to that question in answer to the statement of Mr. Vertrees that he did not propose to call Mr. Ballinger. I should be glad—

The CHAIRMAN. He did not say that.

Mr. VERTREES. I did not make any such statement as that.

Mr. BRANDEIS. I say you did not propose to call Mr. Ballinger now.

The CHAIRMAN. I think the proper course for you to pursue, Mr. Brandeis, that is my opinion, is to go on and close your case as far as you can. When you are through, then Mr. Vertrees can call his witnesses in the order he desires. Now, you will never be cut off, even when he gets through with his case. You can not only cross-examine the witnesses, but if you have any further testimony I have no doubt but what the committee will let you put it in at any time.

Mr. BRANDEIS. Is the chairman now expressing the vote of the committee on this subject?

The CHAIRMAN. We have not had any vote. I am expressing my individual opinion.

Mr. BRANDEIS. It seems to me to be a vital matter, and I respectfully request that I be advised whether that is the action of the committee or only the individual opinion of the chairman.

Senator SUTHERLAND. I can say for myself, Mr. Chairman, that I heartily agree with the proposition of the chairman. I think counsel ought to be permitted to call witnesses on the stand in the order that counsel himself may determine.

Mr. JAMES. Is it not usual, Senator, in all cases of trials, for the person most interested to go upon the stand first?

Senator SUTHERLAND. Well, I never heard a judge direct counsel to put any particular witness on the stand. That would be absolutely an unheard-of proposition.

Mr. JAMES. In the shape this investigation comes before this committee, according to our procedure in the State from which I come, Mr. Ballinger would have to go upon the stand first or he could not go at all.

Senator SUTHERLAND. Is it the practice in Kentucky that the court would instruct counsel on one side of the case or the other to call his witnesses in certain order?

Mr. JAMES. Yes, sir. In Kentucky the person who appears as defendant must go upon the stand first or he can not go at all, for the reason that he can not put on his other witnesses and then come along after they have testified and testify himself. Under our rule after the Commonwealth has closed its case then the defendant himself takes the stand.

The CHAIRMAN. In order to get the sense of the committee, I will—

Mr. VERTREES. If there is any question about that, I want to be heard on the proposition.

The CHAIRMAN. Certainly, you will be heard; go ahead.

Senator PURCELL. It seems to me, Senator, that will be making the man accused a witness against himself.

Mr. JAMES. I am not talking about a man going on the stand in the way of cross-examination by Mr. Vertrees. I agree with the committee that Mr. Brandeis ought not to have the right to call him for the purpose of cross-examination. Under the procedure in our State he can even do that; but if he did do it, he would be bound by his answers. But as I understand the situation that now presents itself to the committee, Mr. Brandeis announces "through." Now, then, I say, in consonance with all proceedings that I have been familiar with, it would be proper for Mr. Ballinger to take the stand first.

Senator ROOT. Has Mr. Brandeis announced that he is through?

Mr. JAMES. That is the way I understood him.

Mr. BRANDEIS. I have asked for a ruling of the committee upon this point.

Senator ROOT. You have not announced that you were through, Mr. Brandeis?

Mr. BRANDEIS. I have not made any announcement, but I will make an announcement, in order that the committee may know what the situation is. I, at the outset, yesterday, of this discussion, stated that I did not know until I had had the opportunity of examining Secretary Ballinger whether there was any other evidence that we desired to put before the committee, and I am in precisely that same

position now. I desire to await the examination of Mr. Ballinger until I decide that question.

The CHAIRMAN. Then, with the exception of Mr. Ballinger, you are through?

Mr. BRANDEIS. No; I beg your pardon. I would like to have it perfectly and clearly understood that until I have had the opportunity of examining Secretary Ballinger I shall not know whether I am through or not. The evidence that he might give may be such that I do not care to call other witnesses, but it may be such that I do care to call other witnesses, and perhaps many witnesses.

Mr. JAMES. Then there would be this further thing about it. If Mr. Ballinger takes the stand and gives his testimony then these gentlemen upon the other side may see the necessity of calling certain witnesses here, upon certain facts, but if he is held back until the conclusion of the testimony then this committee may be delayed waiting for witnesses that he might desire to bring here to be heard. In answer to the statement of Senator Purcell that it would be making a man accuse himself—I recognize the fact that the defendant in any criminal case has the right to refuse to testify where the testimony requested of him would incriminate him. But if Secretary Ballinger intends to testify, as I understand from his counsel he does, then the only question for the committee to determine is when he shall testify, whether he shall be permitted to present all of his testimony and then come at last with his own testimony or whether he shall proceed, first taking the stand and present his facts to the committee and then bring out the other testimony.

The CHAIRMAN. Mr. Vertrees, you will be heard.

Mr. GRAHAM. If you will indulge me a moment before Mr. Vertrees makes his argument.

The CHAIRMAN. Let us hear what counsel have to say, then I think we had better retire into executive session and dispose of this matter.

Mr. GRAHAM. My purpose was to call the attention of Mr. Vertrees to points that I would like to have him elucidate for my own benefit. I think the committee will agree with me that this is not a criminal proceeding at all, and is not even in the nature of a criminal proceeding, and the procedure we should follow is not in any way to be determined by the procedure in criminal cases. Now, in civil cases, if this were a proceeding at law, the plaintiff or either party could call for any competent witness, and that witness would have to testify. If we were to look at this in the nature of a legal proceeding, Mr. Brandeis now has a perfect right to call any competent witness whatever, and it is conceded that the Secretary is a competent witness. Looking at the question from a legal point of view, I think no other attitude than that can be taken.

The CHAIRMAN. Mr. Vertrees, you will be heard.

Senator SUTHERLAND. Let me ask you, Mr. Graham, do I understand you to say that you dissented from the action of the committee that Ballinger should not be required to be called and cross-examined by opposing counsel at this time?

Mr. GRAHAM. I expressed no opinion this morning about that. The question was then not as acute as it is now. What I have just said now is my opinion of the legal situation in which we are now placed.

Senator SUTHERLAND. I understood the action of the committee to be unanimous.

The CHAIRMAN. There was certainly no objection made at that time.

Mr. GRAHAM. There was very little opportunity given for objection.

Senator FLETCHER. I think it would save time and accomplish what is desired on both sides if we would let Mr. Ballinger go on in regular order or in any way he saw fit, of course subject to the rules of cross-examination and subject to the right of the other side to make him their witness. The point now made by Mr. Graham impresses me as a point not then considered and as a matter which presents rather a different situation. The question is, Has not Mr. Brandeis the right to call for any witness at any time? If he has, can not he summon Mr. Ballinger here to testify? And has anybody the right to say he shall not be heard, now that we are going to save him for our own time, in our own way? I can not see any escape for the conclusion that either side has the right to examine any witness in the order in which they see fit to present their case.

Mr. OLMSTED. My view of the matter is that neither side has the right to demand the production of any witness at any particular time; it is a matter wholly at the discretion of the committee.

The CHAIRMAN. Mr. Vertrees, you will be heard.

Mr. VERTREES. Mr. Chairman and gentlemen, in view of the suggestion of Mr. Graham it seems to me necessary to bring to this committee's attention the status of the matter first before stating the point which I have to make by way of an objection. I understood the chairman to announce that this committee had ruled unanimously, and I heard no dissent at the time the chairman made that announcement, that Mr. Ballinger could not be called by the other side in view of the fact that he would offer himself as a witness for cross-examination. I now understand the motion which has been made to be different, and the present application is that Mr. Ballinger, in view of that ruling of the committee, shall be required to take the stand first before anyone else does, and when that was suggested I understood Mr. Graham to advance a step further and practically to ask for a recession of the action of the committee on the other question. So it makes it necessary, if it is to take so broad a range as that, for me to state by way of preliminary the situation.

Now, a resolution was passed by Congress which, among other things, stated—and that is the resolution under which this committee is acting—that “any official or ex-official of the Department of the Interior or of the Bureau of Forestry in the Department of Agriculture whose official conduct is in question may appear and be heard before the said joint committee or any subcommittee thereof,” either in person or by counsel.

Of course the general rule is that the expression of one thing is the exclusion of others. Here it is plainly expressed as part of the resolution of authority under which this committee is proceeding that “any official or ex-official whose conduct is questioned may appear and be heard in person or by counsel.” That is to say, nobody else can except by sufferance and permission of this committee.

Now, what happened was that when this committee commenced its investigation an ex-official, Mr. L. R. Glavis, appeared, and he

appeared with his counsel and his counsel examined him. That strictly was under the rules and under the authority of the resolution. Other witnesses appeared with their counsels. Mr. Pinchot as an ex, and that was allowed. As far as the authority goes and the right cross-examination is concerned, it is only by the permission of this committee that Mr. Brandeis or Mr. Anybody else can appear here to direct the manner or suggest even as to the manner in which this investigation shall proceed. If his client is being investigated, and he so considers it, he has that authority. It might be pressed still further, and we have raised no objection on that ground. The fact of it is, the gentleman whom he represents, if he represents Mr. Glavis, considers that a part of his duty to appear against someone else—that is, against Mr. Ballinger—and possibly, that by broad expansions of the rule, might be carried to that extent. At any rate, we have raised no objection to that procedure. Mr. Ballinger understood in the outset that while these people came here with their lips protesting that they had no charges—none at all, no charges—yet their tongues at the same time were leprous with the most defamatory insinuations.

We accepted that situation. We came here to represent Mr. Ballinger. We have not interposed from the hour this investigation began one single objection to a fact, to an inference, to a suspicion, to an inferential, to an argument, or to anything that might be said or suggested. Everything that has been called for, whether it was hearsay or otherwise, Mr. Ballinger's counsel have not opposed the slightest objection. And then so far as the presentation of the evidence was concerned, this committee has given it over to the other gentlemen; and when more than once they claimed that it would break the sequence of their story, this committee—I recall one occasion particularly—adjourned that that might not be done.

Now we feel that under these circumstances, notwithstanding all these protestations, we knew at whom this malevolence was aimed, and not in defense of the gentleman we represent as a gentleman whose character was assailed, but as a member of the Cabinet of the President of the United States, that it was due that the fullest investigation should be had, not only that he might be vindicated, but that no reproach should be cast upon the Cabinet. So we said nothing; we let it be as broad and as general as the case could be. So it came. This committee gave over to them, as I see it, the entire conduct and control of their evidence, that was meant to be the evidence of a prosecution, although there was not courage anywhere to say so. Witness after witness protested; we make no charge, and yet they smote with the blade of Joab every time. Those were the circumstances of the situation that were presented to us. So we felt that when the time came, as little as we could ask was not that we should be favored, because the gentleman of the Cabinet of the President of this Republic is assailed—ask no favors on that account—but that we might be accorded simply that same course of dealing that had been accorded to them; that is to say, to control the production of their evidence and present in the forms in which they see fit to do it. Now, this of course comes for no other reason nor for any other purpose than as a mere reflection upon Mr. Ballinger. The suggestion that underlies it is that he would lie by; although we have not said we were going to keep him until the end, although we will keep him until we get ready

present him, whether it be at the end or whether it be in the middle or whether it be at the first. We have made no such announcement to these gentlemen.

Now, the idea was that Mr. Ballinger would lie by, that is the implication I mean—a gentleman of his standing and respectability—and hear what was said and try and fit the story to that, as if they didn't know, and as if the committee did not know, as if the whole country did not know, that Mr. Ballinger long since in a most elaborate statement stated to the President of the United States and to you, all of which you have before you, exactly what his connection with that matter was, and yet all that is put in at the suggestion of themselves; that to-day for the first time we have heard them come and arrange themselves behind what they call the charges of Mr. Pinchot—charges with which we have dealt in the past and with which we will have to deal again.

Now, coming down to the rules and suggestions that are made here about trials. The rules of law relative to criminal trials and civil trials in the production of evidence have been absolutely ignored by this committee. Why? Because the committee appreciated the situation—I imagine so at least; I have appreciated it; I have seen what it meant; I saw that day after day, as this thing was pressed home against us, things were allowed in evidence which did not have the respectability even of nonsense; that these things were done, thinking that at some time this committee might get tired and make some rule and stop it, and then there would be raised the howl and cry of persecution, "You have cut us off from the opportunity to present our case." We have never asked it in the least. That has been the course of this case, so far as it has been presented to us.

Now, coming down to whether the rules of criminal or civil procedure apply. I say that the rules laid down in all the books have absolutely been ignored, and I am not complaining because we want it just as broad as it could be made, to the by-paths as well as the highways. We have never objected. But the rules have not been applied at all—the rules of either criminal procedure or civil procedure, and therefore it seems to me when they are invoked here now it is entirely too late in the day, if the idea is to do justice.

Now, so far as the rules of criminal law are concerned, we all know that under those statutes which allow an accused person to testify, which formerly was not allowable, that most States require him to testify first; that in civil cases where parties are allowed to testify, in most States the rule is either that he shall testify first or that he shall go under the rule. But the rule has not been called for here by anybody in any case, and the only object in deferring the examination of Mr. Ballinger would be to keep him from hearing and knowing that which has been stated, all of which is known and read and seen because the witnesses upon whom we will chiefly rely, as we all know, have already made written statements to the President. The thing as we understand it is as clear as day, and so, therefore, in asking that we shall be allowed to be the directors and controllers of the manner in which this evidence shall be presented, we feel that we are asking nothing more than has been accorded the others, and nothing more than is right in the present case. After all, it is for this committee to determine, not by any rule arbitrary and fixed, as they suggested, but according to those rules which, when

the investigation goes to the character of a gentleman, the character of a Cabinet officer, those rules that ought to prevail and which would seem justice would require.

So far as Mr. Ballinger is concerned, he will testify. Nothing can keep him from testifying excepting the peremptory command of this committee, and this committee, of course, will not think of making a rule like that.

So, for these reasons, Mr. Chairman, I insist that we shall have the full privilege of presenting evidence which we shall present as against these accusations, which really are directed against him, and in that manner which will present it most clearly to this committee for its final determination.

And furthermore, I am going to ask, after the committee has ruled on this question, in view of the fact that it is not possible to present witnesses in the order in which their evidence should be considered, that this committee permit me to state to it in an orderly and a connected way exactly what will be proven and the names of the witnesses by whom it will be proven, and the order in which it will be presented, to the end that, let the witnesses come when they may, the moment it is stated it will, in the minds of the members of the committee, take its orderly range and place, and will therefore enable them easily to come to a just and proper conclusion.

Senator FLETCHER. Let me ask you just one question. Suppose in the progress and development of your client's case you should want a particular witness to prove a particular fact, would you not feel that you would have the right to ask the committee to have that witness called?

Mr. VERTREES. Assuredly.

Senator FLETCHER. You might say: "I want to prove so and so by Mr. Pinchot or by Secretary Wilson."

Mr. VERTREES. Certainly.

Senator FLETCHER. "I want to call him as a witness next in order." Would you not, under those conditions, expect the committee to yield to your request in that connection?

Mr. VERTREES. I should feel that it had done me an injustice if it did not.

Senator FLETCHER. Is that not a somewhat similar case?

Mr. VERTREES. Not in the least.

Senator FLETCHER. These people have stated that they propose to prove certain things. They may have in their mind—I do not know what is in Mr. Brandeis's mind; I am looking at it impartially, as I see it—but they may have in their mind some fact somewhere which they announce to the committee that they propose to establish, which they have failed yet to establish, and they are relying on one man to do that.

Mr. VERTREES. Senator, they deliberately and continuously refused to make an issue. This is not the case of a criminal procedure or a civil pleading, in which there is a definite issue, in which the plaintiff comes and he has the burden of proof upon him, and if he fails to establish his case he may suffer a nonsuit.

Senator FLETCHER. I grant you that, that we would save time by letting this examination which Mr. Brandeis proposes to go into with Mr. Ballinger, to let it take place when Mr. Ballinger was on the stand. I feel that way now, that if you will accommodate the situation so as

to enable this investigation to proceed in order that they may determine—Mr. Brandeis may determine—what further witnesses he will need. It may be, as he has stated, that he may not need any.

Mr. VERTREES. Has he ever stated to you what he proposes to prove by Mr. Ballinger?

Senator FLETCHER. He stated to me just what he stated to you.

Mr. VERTREES. Nothing. He has not yet made a statement to this committee of a single fact which he proposes to prove. That is not all. This matter was projected upon this country and presented to this committee, as a thing in which these gentlemen proposed to come and attack Mr. Ballinger and by self-accusation inculpate and incriminate him; but the roar and the howl was that we have got facts to prove the case which we desire to present to the committee that they may see that here is an unfaithful and an improper public servant.

Now, when that is a miserable failure, as everybody sees, as a last chance, as a last hope, the object is not to put a man upon the stand who could make an orderly, clear, chronological statement of the situation of the facts, but to harass him in the hope that something can be drawn to bolster up a failing case. That is the case, as I see it, Senator, and I think it would do great injustice to Mr. Ballinger, or to any man under the circumstances of such a situation, to give over the control of his case and his evidence to those who are his adversaries.

Senator ROOT. I move that the committee go into executive session and consider this matter.

Mr. BRANDEIS. I assume from Senator Root's motion that you do not care to hear any argument upon this.

Senator ROOT. If you wish to speak, I will withhold the motion.

Mr. BRANDEIS. I want to ask, Senator Root, whether you and Senator Flint and the others desire to have me answer what seems to be an argument upon this case or a statement like unto an argument which Mr. Vertrees has made; if so, I will be very glad to do it at this time.

Senator FLINT. I would like to make this statement, as my name has been drawn into this. I feel just this way about it, that the committee ought to have some part in this proceeding, and that it makes very little difference to this committee whether you place your witnesses on the stand in this way, or whether Mr. Vertrees places his witnesses on the stand in the order that he may wish to. It may be that after you have both finished with your witnesses that this committee would like to send out to get witnesses and ascertain just what we want to know. We are making the investigation, and the only part that counsel have in this matter, as far as this resolution is concerned, is that a witness may appear by his counsel. Now, the only reason Mr. Vertrees is here or you are here in cross-examining or presenting this case is to aid this committee in ascertaining the facts in this matter, and as far as the proceedings are going now, it would appear that Mr. Vertrees and Mr. Brandeis and the other counsel have taken possession of the investigation, and not the committee. Now it seems to me that we ought to go on in our own way and investigate this matter. So far as counsel can aid us, we would be very glad to have their aid, but as a matter of fact this committee ought to determine just how we shall investigate this matter.

Mr. BRANDEIS. If you bear in mind all I asked was a ruling of the committee on that point.

Senator FLINT. You called my name, and I wanted to give my answer as to the way I felt about it.

Mr. BRANDEIS. I did, because you had made special reference in the morning's argument on this point, and I wanted to feel sure that I had answered your position.

The CHAIRMAN. Senator Root made a motion to consider this matter in executive session.

Mr. BRANDEIS. If you desire—I do not know that I am justified in detaining the committee further than this—it seems to me that the most that Mr. Vertrees has stated that related at all to the question, related not to the question which I had presented, but to the question which I was told this morning had been settled, and therefore I could not argue. I understood from the chair and from members of the committee that the reason that my request was not granted to call Mr. Ballinger was in order that Secretary Ballinger might have an opportunity of making his statement of his position uninterrupted by the examination of others. Now the proposition and the request that I made that he should present that statement is entirely consistent with that end which I understood the committee had been seeking to attain. Therefore I think that his presence—

The CHAIRMAN. Senator Root made a motion that the committee go into executive session to pass upon this question.

(The motion was agreed to.)

The CHAIRMAN. The committee will retire.

(The committee thereupon, at 2.45, proceeded to the consideration of executive business, and after such consideration returned to the room.)

The CHAIRMAN. The committee will please come to order. The committee have adopted this resolution and made this order:

That the committee will not at present make any rule respecting the order of proof, and the request of Mr. Brandeis that Mr. Ballinger be called first is denied.

The case will proceed. Have you any more witnesses?

Mr. BRANDEIS. I have stated my position on that, Mr. Chairman.

The CHAIRMAN. Have you any other witnesses, Mr. Pepper?

Mr. PEPPER. No, sir.

The CHAIRMAN. Mr. Vertrees, you can open your case.

Mr. VERTREES. Mr. Chairman, before proceeding with our evidence I wish to bring to the attention of the committee, Mr. Chairman, the fact that in February, when Mr. Barr was examined, you will find his statement on page 1094 of the record, and there was an agreement to which he referred between himself and Mr. Glavis which he was to produce. I understand that counsel have it. It has been here for some time, but it has not yet been filed with the clerk of this committee, and I wish it filed now.

The CHAIRMAN. I think that agreement ought to be produced.

Mr. BRANDEIS. Do you think it ought to be filed now, or such time later in the case as counsel may desire.

The CHAIRMAN. I think it should be filed here now, because it was a part of your case that was made at that time.

Mr. BRANDEIS. Not at that time.

Mr. VERTREES. I will call attention to page 1094 of the testimony, and will ask permission to read a few questions and answers so that you will see our motion is well taken:

Mr. VERTREES. I would like to see that agreement that you spoke of yesterday, between you and Mr. Glavis, the memorandum or agreement, as you called it.

Mr. BARR. I haven't it here.

Mr. VERTREES. I thought you said you had it in the city.

Mr. BARR. I have it in Seattle.

Mr. VERTREES. You can produce it?

Mr. BARR. Yes, sir.

Mr. VERTREES. Well, I will ask you to do so.

Mr. BARR. I have already wired for it.

Mr. BRANDEIS. Do you say, Mr. Barr, that you have already wired for the agreement that you referred to?

Mr. BARR. I have wired for that agreement.

Mr. BRANDEIS. You did it yesterday?

Mr. BARR. I did it last night.

Mr. VERTREES. Have you more than one agreement with him?

Mr. BARR. No, sir.

Mr. VERTREES. Only one?

Mr. BARR. Yes, sir.

Mr. VERTREES. And you have sent for that and it will be here?

Mr. BARR. Yes, sir.

Mr. VERTREES. And you will file it when it comes?

Mr. BARR. Yes, sir.

Now that was about the 26th or 28th of February, and you will recall that it was brought to the attention of the committee at one time, and some of the gentlemen, I do not recall who, said it had accompanied that, but either Mr. Glavis or Mr. Barr was absent at the time and for that reason it was delayed.

The CHAIRMAN. I brought it to the attention of Mr. Brandeis yesterday and I got the impression that Mr. Glavis was here and would produce the document.

Mr. BRANDEIS. I said I expected to produce it in connection with Mr. Glavis's testimony when I call him later in the case. I merely wish to know from the committee (I am ready to obey, of course, any direction of the committee) but I desire to know, in view of the vote just taken, whether the committee desires now to direct me to put in this evidence at this time, or whether I should be at liberty to put it in at such time later in connection with Mr. Glavis's testimony as I saw fit.

Mr. VERTREES. I understand it is in already. Mr. Barr put it in on the 26th of February.

Mr. GRAHAM. Technically, it could not be put in that way, because I think, Mr. Vertrees, the examination you refer to is cross-examination, and was not a part of the case in chief, but came out incidentally in cross-examination.

Mr. VERTREES. That does not affect the question.

Mr. GRAHAM. It was in cross-examination, and had no right to go in as a part of the case in chief from a technical point of view.

Mr. VERTREES. Why not?

Mr. GRAHAM. Because it came out in cross-examination.

Mr. VERTREES. The fact that it came out in cross-examination does not apply to the examination. We are not applying that strict rule of federal law when no objection was made by other people.

Mr. GRAHAM. That would be true, technically; and yet if the other side chose to delay I think they would have the right to, or you could

make them produce it, and you can offer it when you are offering your evidence.

Mr. MADISON. Was it part of your cross-examination?

Mr. VERTREES. Yes, sir.

Mr. MADISON. Really an offer made on cross-examination.

Mr. VERTREES. No, sir. The witness was on the stand and stated that he read an agreement with Mr. Glavis.

Senator SUTHERLAND. He promised specifically when it came he would file it?

Mr. VERTREES. Yes, sir.

Senator FLINT. It seems to me all there is to that is that they should file the document if it is here, and if they want to examine the witness about it they can; but the document having been promised to be filed with the committee, it ought to be delivered.

Mr. VERTREES. It was to be sent to the committee.

Senator SUTHERLAND. If a motion is necessary, Mr. Chairman, I move that Mr. Brandeis be directed to produce and file with the committee at once this agreement.

Mr. McCALL. I doubt if that motion had better be put in that way. I think the evidence will show the status of that agreement. I think there was an agreement that the document would be produced.

Senator PURCELL. As I understand it, he said he would produce it in the same way.

Senator ROOT. The testimony says, at page 1094:

Mr. VERTREES. And you will file it when it comes?

Mr. BARR. Yes, sir.

It is a part of the cross-examination of Mr. Barr.

Mr. MADISON. It was really offered as a part of this examination.

Senator FLINT. I think you ought to file the paper, Mr. Brandeis.

Mr. BRANDEIS. I merely wish to get the view of the committee as to whether I was to be directed in regard to the order in which I shall put it in. It seems to me, in view of the order just made with regard to Secretary Ballinger, perhaps a new order in regard to proof might be designed by the committee, and I wanted the direction of the committee on that point. I have said before, I said to the chairman, that I proposed to call Mr. Glavis and have him testify at a later date in this case on the issue raised.

Senator FLINT. There is no objection to that.

Mr. JAMES. Mr. Brandeis, do you desire to examine Mr. Glavis upon this contract?

Mr. BRANDEIS. Not now.

Mr. JAMES. I understand, but will you?

Mr. BRANDEIS. I shall examine him, expect to examine him quite fully in regard to that matter at a later stage.

Senator FLINT. That is all right, but you have the document here, and you promised to file it.

Mr. BRANDEIS. I did not promise anything. The witness is the one who made the promise; but I have that document. I have not it physically now, but it is available. It is in Mr. Glavis's possession and he can get it.

The CHAIRMAN. And Mr. Glavis is here?

Mr. BRANDEIS. And Mr. Glavis can get it by going to his home.

Mr. DENBY. Did you not promise it yesterday, Mr. Brandeis?

Mr. BRANDEIS. I said when I called Mr. Glavis I would produce it.

Senator ROOT. It is not in your power, Mr. Brandeis; the document was called for during the cross-examination of Mr. Barr, and Mr. Barr, before he left the witness stand, undertook to file it with the committee. Now, it is not a matter of discretion with you like the production of a witness, in the way you would ordinarily produce a witness. It is a document which belongs in the files of the committee.

Mr. MADISON. It was a matter purely between Mr. Barr and Mr. Vertrees. It is a part of the cross-examination and the witness promised to produce it and file it. It was a part of the cross-examination and he has a perfect right—common knowledge to all of us—that written documents may be offered as a part of cross-examination.

Mr. BRANDEIS. This will be filed at any time the committee directs it.

Mr. MADISON. Mr. Vertrees has the right to insist that it be filed now.

The CHAIRMAN. The chair rules that unless the committee objects you shall produce it.

Mr. BRANDEIS. I merely wanted the ruling of the committee on that point.

Mr. McCALL. I would suggest that Mr. Vertrees proceed.

Mr. VERTREES. All I wanted was to get it before I began.

Mr. MADISON. I want it understood right now that there is no discrimination as between counsel, and no reversal of any order that was made by this committee. I want to say now, myself, in view of the things that have occurred here and in the executive chamber, etc., that this is not a reversal of any order of the committee. It is perfectly consistent with the orders that have been made by the committee. I regard this as an offer of an instrument as part of cross examination and not as a part of the original case of Mr. Glavis.

Mr. VERTREES. I do not care to have it to-day; so I get it by Monday morning, that will answer every purpose.

Mr. BRANDEIS. I will file it with the committee. I merely wanted the order of the committee.

The CHAIRMAN. You say you will produce it at the next session?

Mr. BRANDEIS. Oh, certainly.

Mr. VERTREES. I would like to have it before the next session, Mr. Chairman, if there is no objection to that.

The CHAIRMAN. Have you any objection?

Mr. BRANDEIS. Not at all.

The CHAIRMAN. You may proceed, Mr. Vertrees.

Mr. VERTREES. Now, Mr. Chairman, and gentlemen of the committee, in view of the fact that we have a number of witnesses, I think some 20 or 25, and that it will be quite impracticable to present them in the order in which they will relate their testimony, I desire to state to this committee now what those witnesses will prove, what they will be called upon to prove; and that it may be accurately stated, instead of stating it verbally I have reduced it to writing, and with the permission of the chairman and the committee I will read this statement.

OPENING STATEMENT OF MR. VERTREES ON BEHALF OF SECRETARY BALLINGER.

Mr. Chairman, inasmuch as the witnesses can not be presented in the order in which the evidence they will deliver should be considered, it is desired by my associates that I should state to the committee the substance of that which the evidence we shall offer as a whole will prove.

The evidence, as you will discover, is of two kinds, (1) evidence that has no direct relation to the acts, personal or official, of Mr. Ballinger, but which bears upon particular collateral statements of witnesses, like Glavis and Barr and Jones; (2) and evidence which does relate directly to those acts of Mr. Ballinger which Glavis, Pinchot, and company have sought to assail and impugn.

The testimony of Glavis, Jones, Barr, and some others, with respect to certain specific collateral facts, will be shown by such witnesses as Mr. Christensen, Mr. O'Neil, Mr. Todd, Mr. Behrens, Mr. Love, Mr. Sheridan, and Mr. Pugh, to be so grossly false as to convince the committee that in these respects it was deliberately fabricated and is consciously false; for example, the evidence of the witness Jones as to the manner in which Mr. Sheridan conducted the hearings in the Cunningham cases and exposed his case to his adversaries is such a perversion of the truth as to leave no doubt it was deliberate; and the evidence of Glavis as to the relations and conduct of Mr. Behrens and Mr. Dennett is equally false.

It will also be shown that Mr. Glavis endeavored to have an accounting agent of the Government, Mr. Spalding, deliberately falsify the account he (Glavis) had rendered, in order to restore \$55 expended as stenographer's fee for preparing the report to the President which he and Shaw, as the agent of Mr. Pinchot, prepared—the first open attack upon Mr. Ballinger's good name.

It will then be shown that, in September, 1909, Glavis surreptitiously and corruptly concealed among his own private belongings papers the property of the United States Government, which he knew really were not injurious to Mr. Ballinger's name, but which, being hidden, could be made the foundation of a malignant and slanderous accusation, and that, conceiving this to be the situation, he called upon this committee to require Mr. Ballinger to produce those papers with a view of falsely asserting that they were not produced because they would inculpate him. This will appear from the evidence of Mr. Park, Mr. Sheridan, Mr. Christensen, Miss Shartell, and Mr. O'Neil.

The evidence will then be directed to the action and conduct of Mr. Ballinger himself, both as Commissioner of the General Land Office, as lawyer, and as Secretary of the Interior. In addition to official documents, many of which have already been shown, the witnesses, all the witnesses who have any knowledge of the facts, will be presented to testify in the case. The truth with respect to Mr. Ballinger's action in relation to the Cunningham claims, and his official action in all respects wherein it was assailed, will be shown by the evidence of First Assistant Secretary Pierce; Mr. Clements, first assistant attorney; Mr. Finney, assistant to the Secretary of the

Interior; Mr. Carr, secretary to Mr. Ballinger; Mr. Dennett, Commissioner of the General Land Office; Mr. Schwartz, Chief of Field Service; Mr. Heltman, formerly Chief of Division N of the Land Office; Mr. George Otis Smith, Director of the Geological Survey; and Mr. Ballinger himself. The persons who did what was done, and the only persons in a situation to know what was done, and all these persons will be presented as witnesses to prove the truth of the case; and that truth, when related, will be found to be this:

STATEMENT.

Mr. Ballinger, a citizen of the State of Washington, honored and respected by those who know him best, was called by Mr. Roosevelt to be Commissioner of the Land Office, and was commissioner from March, 1907, to March 4, 1908, and has been Secretary of the Interior since March 4, 1909, without solicitation, or procurement on his part. He entered upon the discharge of the duties both as commissioner and as Secretary untrammelled and under no obligations to any person of any kind. Neither in person, nor mediately through any member of his family or any fiduciary, or through any corporation or person or persons, has he had, or owned, while in private or official life, any interest of any kind whatsoever in public lands, or coals, or minerals, in Alaska.

The only interest he has had in the public domain is his interest as a citizen, acquainted with conditions in the West, and as an officer of the Government desiring that to happen and that to be done which is best for the people of the United States.

His conception of official duty as an officer of the Government has been a faithful obedience to and enforcement of the law. He has not regarded the Government as a legalized oppressor, nor every citizen who may deal with it as a thief.

In December, 1907, after he had been commissioner about nine months, Mr. Glavis, then a special agent of the field service, enjoying the confidence of his immediate superiors, believed to be honest and known to be capable, being in the West, conceived the idea that the land laws of Alaska were being violated by wholesale by those who had located coal claims there. The nature of these claims and of these violations, and the transactions which the agents of the Land Office characterized as frauds, have already been explained, and need be mentioned only to be passed by again.

To Mr. Glavis it seems that all these claims appeared to be "frauds," and he accordingly communicated with Mr. Schwartz, his chief, upon the subject. They explained the situation to Mr. Ballinger, the commissioner. Promptly he directed Mr. Glavis to return to the West and to investigate the Alaska coal claims. Mr. Glavis immediately departed from Washington—leaving in December, 1907.

As the committee already understands, among these Alaskan claims were 33, known collectively as the "Cunningham group." They were not "dummy" entrymen, nor were these claimants impecunious adventurers. It seems from the evidence which has been taken in the hearings, and which will be presented to this committee, that they were for the most part men of substance and means; that they paid in full \$1,600 each for the claims, or \$52,800 in all. They were the first in the field; they were the first to pay, the first on the docket,

and having paid in full, if they had practiced no fraud, were lawfully entitled to patents for their lands.

They had located their claims on lands that appear to have great value as coal lands. Their claims aggregate a little over 5,000 acres, or about 8 square miles, and lie in what is known as the Katalla field—the Katalla and the Matanuska fields being the richest coal fields in Alaska so far as known. The known coal fields of that Territory embrace about 1,200 square miles, and the Katalla and Matanuska fields, containing about 100 square miles, are within these fields. It is believed that there are about 12,000 square miles of coal lands in Alaska and probably more.

About 900 locations have been made in the Alaskan fields, but not a patent has issued for a single acre of these lands. As will be observed, the areas covered by the Cunningham claims are relatively small—a mere patch upon the surface of those coal fields; but much or little they should not be allowed to pass from the Government to hands that are unclean or fraudulent or not entitled to take them; and this has been the rule by which the officers of the Land Office, from the Secretary down, have been guided throughout in dealing with public-land claimants.

Very shortly after Mr. Glavis had been put to this work of investigation, as stated above, ex-Governor Moore, of Washington, as representative of the Cunningham claimants, appeared in this city to obtain patents for these lands. This was in December and January, 1907-8, and only a short while after Mr. Glavis had gone. When the governor presented the matter to Commissioner Ballinger, the latter, as it was his duty to do, gave it official consideration. He caused Mr. Schwartz, chief of field service, for whose high character Mr. Glavis himself has vouched, to give him the status of the case. It appeared that all the claimants had paid in full; that receipts and certificates had regularly issued to them, and that reports had been made on their claims to the effect that they were good and lawful claims. Mr. Love's report recommended their allowance; Mr. Jones's reports did not assail the Cunningham claims in the least. Upon the record as it was presented and appeared to Mr. Ballinger, these claims were entitled to be clear listed, and he directed it to be done. He believed it to be right then, and, upon the record as it then stood and was presented to him, he believes it to be right now. Nevertheless, when reminded that Mr. Glavis was at that time in the West investigating Alaskan coal claims, and realizing that it would be possible for something to be reported against these claims, although from the nature of the reports on file it was not expected that this would be done, Mr. Ballinger deemed it due to Governor Moore to inform him of the fact that Mr. Glavis was then in the field, with authority to investigate, and that, while no adverse report was expected as to these claims, yet if one should come and the order of clear listing should be suspended, the governor might understand the reasons why the promised patents had not followed sooner, and that he (the governor) had not been deceived in any way.

Likewise, to the end that Mr. Glavis might inform the office of any new discoveries he had made, as it was his duty to do, and strike off these claims from further consideration if he had not, the commissioner directed Mr. Glavis to be notified that these claims had been clear listed, and Mr. Glavis was notified by letter on the 7th day of January, 1908.

By reason of Mr. Glavis's absence from Portland, the letter was not received by him until the 22d of January, 1908. This, however, is not material, since it was received and replied to in ample time. January 22, 1908, Mr. Glavis telegraphed, in reply to the notice he had received, that these claims should not be clear listed and that a letter would follow explaining why. Mr. Ballinger, having understood that Governor Moore had conferred with Secretary Garfield as to these claims, himself conferred with Mr. Garfield as to Mr. Glavis's wire; and that he did so will not only be shown by Mr. Ballinger, but by Mr. Heltman also, and it is not denied by Mr. Garfield himself; the most that he will say is that he does "not recollect."

Without waiting for the letter which he (Glavis) had written, Mr. Ballinger directed the clear-listing order to be recalled, and it was immediately recalled and canceled; and no effort has ever been made by any official to reinstate that order to this day. When Mr. Glavis's explanatory letter was received, it did not assail the Cunningham claims. The burden of its suggestion was that Agent Love, who had made the report upon which the clear listing had been based, was a candidate for marshal at the time, and therefore might have been more lenient and kindlier in his investigations than he otherwise would, and that it would be the part of prudence to hold the claims up for a time that there might be further investigation by someone else. Moreover, as the letter of January 22, 1908, on its face shows, Mr. Glavis himself regarded the delay, with the lights then before him, as probably temporary, for he says: "I expect to be able to submit report thereon within a few months, so that the additional delay could hardly cause the claimants much hardship."

Governor Moore departed from Washington in the expectation that patents would shortly follow, but as they did not in the latter part of February, 1908, he telegraphed to inquire the cause of the delay, suggesting that he was advised that obstacles had been placed in the way by competitors. He was immediately informed that the patents were held up temporarily by reason of the agent's report. Mr. Schwartz and Mr. Ballinger naturally regarded the objection which Glavis's letter had suggested as one which inquiry would reveal to be without foundation, as it really was.

Mr. Ballinger, by reason of his residence in the West, was well acquainted with the conditions which there prevailed, and particularly was he informed with respect to Alaska and her mineral and coal fields. He understood that there was necessity for remedial legislation of some kind, and many citizens of the West conferred with him upon that subject. He aided in the preparation of the bill to be introduced in the Congress for the relief of Alaskan conditions—a measure known as the "Cale bill." It will be shown by documentary evidence that Mr. Garfield approved of this Cale bill himself. Mr. Ballinger appeared before a committee of Congress to advocate its passage and to explain its terms. It is sufficient to say with respect to this that the bill shows on its face that it did not in anywise validate fraudulent claims; that it radically changed the law from what it had been, separating the mineral estate from the surface estate, and that it expressly provided that locations already made in good faith might take the benefit of its provisions to the extent of consolidating claims to the amount of 2,560 acres. By necessary implication, it excluded all those which were not in good

faith. It proceeded upon the assumption that fraudulent claims could not be patented, and that bona fide claimants had vested rights which legislation could not defeat. It did not assume to determine the character of any claims nor to condone bad faith.

March 4, 1908, Mr. Ballinger retired from the office of Commissioner of the Land Office with the high commendation of President Roosevelt and Mr. Garfield both and resumed the practice of law in Seattle, his home. At the time he ceased to be commissioner no evidence had been found nor had any report been made assailing the Cunningham claims. Subsequent to his retirement a book known as the "Cunningham journal" was found by Mr. Glavis—a book regarded as of evidential value in establishing the claim of fraud. All this, however, happened after Mr. Ballinger retired from office, as stated before.

Mr. Ballinger had no connection whatever with these claims, nor did he have any professional relations with these claimants until September, 1908, when, at the request of Mr. Cunningham and Mr. Smith, two of the group, he prepared an affidavit to be filed in the General Land Office and presented it in person to the Secretary of the Interior. His name as attorney, in conjunction with his law firm, was printed upon the cover, showing fully and precisely the character in which he had come.

The evidence of Mr. Cunningham and the 32 other claimants has been taken in the "hearings" which are now being had, and the evidence of 27 claimants has been filed before this committee, and the testimony of the remaining claimants will be presented in a few days. It will be seen, when examined, that these witnesses testify that the facts then stated by Mr. Cunningham in that affidavit were true then and are true now. With the truth or falsity, however, of the statement made in that affidavit we are not concerned in the present investigation, because it was represented by Mr. Cunningham to Mr. Ballinger to be true; he believed it to be true; and no one pretends that he was informed that it was not. However, as stated, if human testimony is to be believed, the depositions referred to and now on file show that it was and is strictly true in point of fact.

Mr. Ballinger had the legal and moral right to act as attorney in that matter for Messrs. Cunningham and Smith, and the fact that his firm were the attorneys was indorsed upon the back of the affidavit itself, according to the usual way in which the names of attorneys appear. It is to be remarked that the service, professional in its nature, performed by Mr. Ballinger was in a sense incidental, in that he was not the regular counsel in the case and was acquainted with but few of the claimants.

Mr. Ballinger remained in private life, practicing his profession at home from March 4, 1908, until March 4, 1909, when he became Secretary of the Interior, as stated hereinbefore. Although Mr. Ballinger had never been counsel for the Cunningham group, yet he had performed this service for Mr. Cunningham as their representative, as stated hereinbefore, and by reason of that fact, when Mr. Ballinger became Secretary he felt that he was disqualified from official action touching those claims. Accordingly, among the first of his official acts he informed Mr. Pierce, First Assistant Secretary, of the fact of his disqualification, and directed him to take control of this group of claims. Mr. Pierce, his first assistant, who was assistant

when Mr. Ballinger became Secretary, is a lawyer and a gentleman of high standing, without reproach, and from that hour has never, even by indirection, been subjected to any influence on the part of Mr. Ballinger that might swerve his judgment or his action with respect to these claims in any way.

It will also be shown by the evidence of witnesses, such as Mr. Allen and the Misses Wilson; and Mr. Ballinger, himself, that he did not prepare an escrow agreement, or any other agreement, covering or hinting at any illegal transaction in public lands; that he did not direct, or request, his name to be omitted from any records of any case, and that his name was not omitted from any record in point of fact, and that his action with respect to the Wilson-Allen transaction, though private and not official, was honorable, professional, and upright in all respects.

While various things were done in the Land Department between March 4, 1908, and March 4, 1909, with respect to land claims, it is not material to relate them, inasmuch as Mr. Ballinger was then in private life.

Without solicitation or procurement he became Secretary of the Interior March 4, 1909, to succeed Mr. James Rudolph Garfield, who had been notified that he might expect to retire about one month before. Mr. Ballinger, then, found these duties imposed upon him by virtue of his office: The General Land Office, with its care, survey, and disposition of the public lands, including contests between rival claimants to land; the Geological Survey, whose duty it was to classify the public lands, examine their geological structure, mineral resources, and mineral products, and investigate their surface and underground waters and fuels, and also the causes of mine accidents; the Reclamation Service, whose duty it was to construct and operate irrigation works, with 27 pending projects in which there are now invested 50 millions of dollars and which will require 70 millions more; the Indian Office, having under its charge all the Indian tribes in the United States, exclusive of Alaska, their lands, money, schools, and the purchase of supplies; the Pension Bureau, charged with the examination and adjudication of pension and bounty-land warrants, and the like; the Patent Office, administering the law relating to the granting of patents and the registration of trade-marks; the Bureau of Education, to collect statistics and information and report upon educational matters, and charged with looking after the schools of Alaska, and the reindeer industry in Alaska, and the administration of the endowment fund for the support of agricultural colleges; the office of the Assistant Attorney-General for the Department of the Interior, to consider cases and appeals transmitted from the General Land Office. He found himself also charged with the care of the Hot Springs Reservation, the Yellowstone, the Yosemite, the Sequoia, the General Grant, and other national parks; with the Government Hospital for the Insane; the Freedmen's Hospital; Howard University; the Columbia Institution for the Deaf and Dumb; the Maryland School for the Blind; and numerous minor institutions. He found over 30,000 land cases suspended in the department for investigation, and 900 of these were Alaska claims.

Mr. Ballinger deemed it due to the Government and to the claimants that something should be done looking to the determination of this vast number of claims, an appropriation for a million dollars

having just been made by Congress. He gave orders for the work to begin. He gave no special orders in any case nor in any class of cases, but orders in all and for all. In general terms he said, push all cases of fraud or moral turpitude with vigor, but be as light on minor and technical violations as justice and right will allow.

Mr. Ballinger found Mr. Pierce, as his first assistant, and Mr. Dennett, as commissioner, and Mr. Schwartz, as chief of field service, already in office, and, believing them to be competent and capable, he continued them. He found Mr. Glavis in charge of the investigation of all Alaskan claims and he kept him there. When a new district, with headquarters at Seattle, with jurisdiction over Alaska claims was created, Mr. Glavis was not left at Portland, or side-tracked, as a designing superior would have directed, but he was transferred to Seattle and made chief of the new district, to the end that he might continue in charge of the investigation of Alaska coal claims as before. For emphasis, that will be repeated which has been stated before, namely, that Mr. Ballinger, neither directly nor indirectly, had any interest in Alaska of any kind; that when he became Secretary he was representing no person who did; and that he kept Mr. Glavis, whose zeal and fidelity to duty have been so much proclaimed, in charge of these investigations throughout the entire time that they were being made.

Mr. Ballinger did not direct Mr. Pierce to assume direction and control of the Cunningham group of cases because he (Mr. Ballinger) was then counsel for those claimants, for he was not; but solely because he had been attorney in the transaction hereinbefore mentioned, and he recused himself on that account, feeling that it would not be proper for him to take official action with reference to these claims; and the only act on his part that even indirectly related to these claims was the suggestion made by him to Glavis, in July, 1909, at Seattle, as to telegraphing the Land Office—a suggestion which Mr. Glavis conceded was in aid of his efforts and desires.

By reason of the large appropriation which had been made, substantial results in the field were expected and desired. Mr. Schwartz, the chief of field service, felt especially that the responsibility of any deficient showing was upon him, and he so informed Mr. Glavis and the agents then in the field.

Now, it happened that Glavis and his assistants had gotten affidavits from several hundred of the 900 Alaska claimants, and the situation had been resolved to one in which action of some sort ought to be taken with respect to these claims. Moreover, Governor Moore and others were insistent that action should be had.

The act relating to the Alaska coal claims, known as the act of May 28, 1908, was not entirely clear, and it had not been passed upon by any court. Mr. Glavis, apparently zealous and earnest, and consumed with a belief that all Alaskan claims were fraudulent, contended that the act of 1908 was not remedial in effect and did not relieve the situation in Alaska in the least. There were others, Mr. Dennett, for example, who thought otherwise. Mr. Glavis desired to have the law authoritatively construed. To that end, he and Mr. Schwartz, his chief, who, it seems, concurred largely in Mr. Glavis's interpretation of the act, together with Commissioner Dennett, conferred with Mr. Ballinger in May, 1909, with a view of taking the opinion of the

Attorney-General as to this act. The Secretary concurred in the advisability of that course and directed Mr. Schwartz and Mr. Glavis to prepare such a statement as would present the questions to the Attorney-General upon which his opinion was desired. Mr. Glavis expected that statement to go to the Attorney-General; Mr. Ballinger did also. But it happened that it did not, and the fact that it did not it now seems to the minds of Glavis and Pinchot is a circumstance of suspicion—the basis for the charge of an inexplicable change of purpose overnight. It will be shown that what really happened was this, as Mr. Glavis well knows: Mr. Schwartz and Mr. Glavis prepared the statement for the Attorney-General, as directed. However, it was not delivered to Mr. Ballinger, nor sent to him, but it was delivered to Mr. Finney. Mr. Finney conferred with Mr. Clements, then acting as Assistant Attorney-General, with respect to it. Upon examination, knowing nothing whatever of the conversation between the Secretary, Mr. Dennett, Mr. Schwartz, and Mr. Glavis, they dealt with it as they deal with ninety-nine one-hundredths of the law questions that are presented—that is, decide as a law department for themselves. To the end, however, that they might know exactly what was wanted Mr. Clements sent for Mr. Glavis and conferred with him as to the statement. Mr. Glavis did not so far as hint to Mr. Clements, or anyone else then or at any other time, that he had expected it to go the Attorney-General instead of them; nor did he indicate any surprise or disappointment that it had not. Mr. Glavis left him without any complaint and with the knowledge that the law force of the Secretary's office would render the opinion and that those gentlemen did not understand the case as stated to include that class of cases which comprises completed entries, or the Cunningham claims. Mr. Clements and Mr. Finney presented their views of the act of 1908 and the stated questions to Mr. Pierce. Mr. Pierce accepted their view, approved of it, and rendered the opinion of May 19, 1909, which the committee has already seen.

Mr. Ballinger knew nothing whatever of all this until it was brought to his attention afterwards. He had no thought at any time of avoiding the Attorney-General, and Messrs. Pierce, Clements, and Finney had no knowledge whatever of that which had passed between Mr. Ballinger and Mr. Dennett and Mr. Schwartz and Mr. Glavis on this subject. Neither had they any thought of circumventing the Attorney-General and preventing an expression by him. Whether Mr. Glavis's refusal to speak out when he conferred with Mr. Clements is to be ascribed to a vanity that brooks no suggestion, or a cunning purpose to give a false and hurtful coloring to that which he knew was about to happen, is a matter of inference, which it is not our purpose to determine in the statement now being made. Assuming that up to that moment Mr. Glavis was well intentioned, the fact which then appears is that he was disappointed at Mr. Pierce's decision, and conceived that it opened wide the door for the patenting of all Alaska claims—dummy entries, fraudulent claims, good claims, equally and alike.

It will also be shown that when Mr. Glavis asked for this opinion as to the construction of the act of 1908, he knew that the Land Office had already been unofficially informed that the Cunningham claimants would not attempt to come in under that act, as he now knows that they have refused to do so up to this time. Equally true it is,

as the evidence will show, that Governor Moore was disappointed and complained at Mr. Pierce's view of the status of the Cunningham claim.

Mr. Ballinger stood by Mr. Pierce and Mr. Glavis both, and insisted warmly to Governor Moore that his criticisms of these two gentlemen were wholly undeserved. Blindly misconceiving the opinion of Mr. Pierce, Mr. Glavis did take steps, through Mr. Hoyt, to have the Attorney-General pass upon the act and for the purpose of having the opinion of Mr. Pierce reversed. When it was again suggested to Mr. Ballinger that the opinion of the Attorney-General be taken, he directed it to be done; and the opinion of the Attorney-General was taken. That opinion did not overrule Mr. Pierce's opinion in any respect, although Mr. Glavis appears to believe that it did in all respects. As he affected and still affects to understand it, and proclaims through Collier's Weekly, he got in the opinion of the Attorney-General everything that he desired.

Under the circumstances of that situation, the investigations were pursued as before. Governor Moore, a representative of the Cunningham claimants, standing upon the old law and refusing to come under the act of 1908, insisted that the investigation should proceed, and Mr. Schwartz, chief of field service, also insisted upon activity and dispatch. Mr. Glavis was still the agent relied upon to investigate and report as to the Alaska claims. He was pointedly instructed to report these claims by groups or as individual claims—that is, not to investigate all the 900 and then report, but to investigate and report group by group, or claim by claim. However, Mr. Glavis, with purposes of his own, resolved to disobey this order, and to investigate them all before he reported any. The result was friction between him and his chief, because of his delay in reporting as to claims and groups. Mr. Schwartz became insistent, and when excuses were no longer available, Mr. Glavis began to contend that the "hearings" in the States in the Cunningham claims should not be entered upon until the result of field examinations in Alaska, which had been ordered, should have first been received and seen. The view of Chief Schwartz was that it was unnecessary to wait for these reports so far as taking evidence was concerned, though necessary to have these reports before concluding the trial. Mr. Glavis had a different view. His delay and evasion was such that Mr. Schwartz informed him by wire that in the near future a man would be sent out to take his place and he would be continued as a mere assistant. Mr. Sheridan was selected by Mr. Schwartz and sent out, but not with instructions to take charge at first; only to assist.

About this time Mr. Glavis, with customary suspicion, conceiving that Sheridan had been sent out merely to make a report adverse to his views, through Forester Allen and a Mr. Shaw, endeavored to have the Pinchot service request the Secretary of Agriculture to ask the Secretary of the Interior to delay the hearings in the Cunningham cases until the field reports should first be received; and the Secretary of Agriculture did so request.

Mr. Sheridan was sent out with instructions to make a true and faithful report; and this he did. After examination he concurred in Mr. Glavis's view, and so reported to the office; and upon his report, together with the request of the Secretary of Agriculture, the taking of evidence in the United States was postponed until

the reports of the field investigations in Alaska could be received. This was in July, 1909. The taking of that evidence has proceeded, and has not been concluded to this day.

Now, from this statement it will be perceived that there is no act of Mr. Ballinger in connection with these transactions to which it is possible to ascribe an unworthy motive or improper purpose otherwise than through the suspicion of a perverted mind, or the resentment of a discharged public servant, or the programme of an unscrupulous political intrigue.

Mr. Ballinger ordered the Cunningham claims to be clear listed on the 26th day of December, 1907, on the record then presented—a record that not only justified but demanded the order he then made. As stated, when he made the order, he directed Mr. Glavis, then in the field, to be notified; and he was notified.

January 22, 1908, upon receipt of Mr. Glavis's telegram, Mr. Ballinger promptly rescinded the order, put the claims back in "chancery," and neither he nor any subordinate has ever sought or attempted to restore that order to this day. The sole effort has been in the direction of investigation and trial.

Mr. Ballinger has not at any time been interested in Alaska coal or Alaska lands, directly or indirectly. He was never the counsel for the Cunningham claimants nor has he represented them in any matter since September, 1908. His professional connection was temporary; still, it was enough to cause him to refrain from taking action of any kind with respect to these claims after he, as Secretary, reentered public life. He kept Mr. Glavis in charge, and no word ever fell from his lips as to Mr. Glavis except words of commendation and defense. He could have transferred Mr. Glavis at any time, and obviously would have done so had he been minded to bring about improper official action, which Patriot Glavis was preventing and thwarting where he was.

Moreover, this evidence which we will now offer will prove that Mr. Ballinger's assistants and subordinates, one and all, have acted with reference to these coal claims in a clean-handed, straightforward, honorable, and upright way, and that not one of them has ever received any instructions from Mr. Ballinger other than to do his full duty in all respects.

When Mr. Ballinger has been heard it will be seen that true conservation has no steadier supporter than he. He holds that conservation is not a thing of caprice, but of law; that those who have already been born and now breathe have rights as well as those yet to be born and to breathe, and that development ought not to be exiled by theorists and doctrinaires.

Mr. Ballinger did restore to entry and settlement vast areas of the public domain which, under one pretense or another, had, as he believes, been unlawfully and improvidently withdrawn. He still believes that he was right, but if he erred, he denies that it is an error for which the good faith of his official action should be questioned at the instance of those who would substitute opinion for law. Upon the other hand he did make withdrawals for power sites, because they are valuable for power sites. In so doing he strained the timbers of the law, but under the circumstances of the situation deemed it permissible to make qualified or temporary withdrawals until Congress could act; and during the interval not a site was lost.

The evidence now to be offered will make all of these things so clear, so undeniable, and so plain that this committee will cast about to discover how it is that men who knew as much of the truth as Pinchot and Glavis and Garfield and Davis and Newell knew could have the daring to present themselves as sincere, honest harborers of a suspicion, much less as persons really believing that they had knowledge of inculpatory facts.

Glavis, suspicious by nature, became perverted by detective service until, apparently, he has become incapable of fair judgment. Mr. Pinchot, vain, and flattered as Chief of the Forest Service by his own publicity bureau, had come to regard himself as the most important personality in the Department of Agriculture. "Conservation," like all sound doctrines, when preached by the vain and self-seeking, had become perverted until it was here a folly and there a reproach. "Reclamation," so-called, and "conservation," bellowing, toured hand in hand, and those who feel, rather than those who think, appear to see great forests spring up like Jonah's gourd in a night, and vast reclamation projects established not only where such projects can and ought to rightfully flourish, but at every power site which a missionary might describe. Combining these doctrines, their chiefs swept all aside that stood in their way. "Cooperative agreements," "cooperative certificates," "ranger schools," wholesale withdrawals of the people's lands, became the vogue. Here was the reign of men.

March 4, 1909, there came the reign of law. Mr. Ballinger conceived that his duty was not to be expressed in the words "I hereby direct and order," but in the words "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled," and he acted accordingly. By command of the law he undid some things which Mr. Garfield had done. By command of the law cooperative certificates and cooperative agreements and ranger education at government expense became things of the past. When they lost their vivid coloring and took on a cold dead gray there was a subsidence in the proportions of the Forestry Chief—he ceased to be the Department of Agriculture. He was exposed, and Mr. Ballinger had committed the unpardonable sin of defeating the ambition of a self-exaggerated man. Mr. Ballinger was now where Mr. Garfield was not, and Mr. Pinchot was confined to the forest reserves. Broad as they are they are too small for him. Here was the birthplace of that spirit of resentment and revenge which blindly wrote "mistakes" to the President and utilized this Glavis, of the detective service, to attempt to assassinate Mr. Ballinger's good name, and thereby bring reproach upon the President, who had not retained Mr. Garfield and had dismissed Mr. Pinchot.

This explanation will be made obvious and apparent when the evidence now to be offered is seen.

TESTIMONY OF ADOLPH BEHRENS.

Adolph Behrens, having been first duly sworn by the chairman, testified as follows:

Mr. VERTREES. Mr. Behrens, state your age and residence to the committee.

Mr. BEHRENS. Fifty years of age. I reside at Seattle, Wash.

Mr. VERTREES. Are you acquainted with Mr. L. R. Glavis, who has been a witness before this committee?

Mr. BEHRENS. I have met Mr. Glavis once or twice, except here. I have seen him here a number of times.

Mr. VERTREES. Are you acquainted with Mr. Dennett, the Commissioner of the Land Office?

Mr. BEHRENS. I am.

Mr. VERTREES. How long have you lived in Seattle?

Mr. BEHRENS. About seventeen years, or a little over.

Mr. VERTREES. Mr. Behrens, in Mr. Glavis's testimony there appeared a statement with reference to you, one in the original examination and one in the cross-examination. On his original examination, which is to be found on page 282 of the testimony, Mr. Glavis said:

Then Mr. Dennett arrived, about July 20, and the first day I arrived we were talking about some of his personal affairs, and he was having some trouble about a piece of real estate there in Seattle, and I told him "I thought you would straighten that out, Mr. Dennett. Mr. Behrens told me that he had written you and fixed that up for you." He was going to have some trouble with the city about some condemnation proceedings. He said: "No; I don't know Mr. Behrens." I said: "Mr. Behrens was in the Hunt group, and he told me he had written you." And Dennett said: "No; I don't know Behrens."

The next day, I think it was, or the day after, Behrens had him out to lunch in Seattle.

Then on pages 443-444 of the cross-examination, Mr. Glavis states it in this way:

Mr. Dennett, the first day or the next day after he arrived, told me about his troubles that he was having with a piece of real estate on Second avenue in Seattle; that the county or the city officials, I have forgotten which, were about to condemn part of it to broaden the street, I think it was. I said: "Why, Mr. Dennett, I thought that was all fixed up. A few days ago, when taking the affidavit of Mr. Behrens, Mr. Behrens told me that you were having some trouble, but that he had fixed it all right for you, and that he had written you about it." Mr. Dennett said: "Behrens, I don't know any such person as that." I said: "Mr. Behrens was one of the coal claimants in the Hunt group." "No," he said, "I do not know him at all; never heard of him." Well, I thought that was kind of strange. But a day or two after that, I am not sure now, Behrens came in my office and wanted to see Dennett, and I told him he could see him, and he went in to see him and acted perfectly friendly. And it was that day or the next day that he asked Dennett out to lunch: whether he went or not I don't know.

Now, did you have a conversation with Mr. Glavis, along about the time stated, of any kind?

Mr. BEHRENS. On the 29th day of June I had a conversation with Mr. Glavis in the office of H. R. Harriman in the New York Block, and the name of Fred Dennett was mentioned, and up to that time I did not know what position Mr. Dennett occupied with the Land Office, but I understood he was connected in some way with the Land Office, and I asked Mr. Glavis where a letter would reach him, where I could communicate with him, as I wanted to communicate with him regarding a piece of property on Second avenue, in Seattle. The civil engineer had drawn plans to condemn about one-third of it for the widening of Second avenue, known as the "Magnolia way improvement," and he told me to address a letter to the General Land Office at Washington, D. C., and it would reach him. I think that is about all that was said there at that time.

Mr. VERTREES. Did you have any conversation then, or at any time, with Mr. Dennett at Mr. Glavis's office or in his presence?

Mr. BEHRENS. No, sir.

Mr. VERTREES. Did you write to Mr. Dennett?

Mr. BEHRENS. I did not.

Mr. VERTREES. Did you tell Mr. Glavis that you had fixed up the matter for Mr. Dennett?

Mr. BEHRENS. No, sir.

Mr. VERTREES. Were you then acquainted with and friendly with Mr. Dennett?

Mr. BEHRENS. I had never seen him.

Mr. VERTREES. And did you and Mr. Dennett go out to lunch together?

Mr. BEHRENS. No, sir; never.

Mr. VERTREES. When did you first meet Mr. Dennett?

Mr. BEHRENS. In the law office of Scott Calhoun, corporation counsel of the city of Seattle.

Mr. VERTREES. Where is that as related to Mr. Glavis's office?

Mr. BEHRENS. In the Mutual Life Building about a mile from the federal building, Yesler way and First avenue.

Mr. VERTREES. What was it that you wanted to see Mr. Dennett about?

Mr. BEHRENS. It was in connection with the condemnation of this street, or the improvement.

Mr. VERTREES. Please explain where that was.

Mr. BEHRENS. Mr. Dennett owned a piece of property on the corner of Second avenue and Denny way, and we were attempting—that is, a club had been attempting—to extend Second avenue so as to make a short cut, and connect the outlying districts, Ballard to Magnolia Bluff, by a shorter route, with the main street of the city, and Mr. Dennett was opposed to that; at least there was some one who was opposed and I always thought it was him—I guess it was—opposed to the improvement, and we got them in there in the corporation counsel's office in order to show him the map and explain to him the advantage it would be to his property if the improvement was put through. That was the conversation we had with him, and that was all that occurred.

Mr. VERTREES. Did you have any correspondence with him about the Hunt group of claims?

Mr. BEHRENS. I never mentioned it.

Mr. VERTREES. You may examine Mr. Behrens, Mr. Brandeis.

Mr. BRANDEIS. You are one of the claimants in the Hunt group?

Mr. BEHRENS. I was.

Mr. BRANDEIS. And one of the claimants in the group against whose claims charges of fraud were found?

Mr. BEHRENS. No, sir.

Mr. BRANDEIS. And a report of fraud made. Is that not a fact?

Mr. BEHRENS. No, sir; I do not think that is a fact. In fact, I know it is not a fact.

Mr. BRANDEIS. You do?

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS. You never have written to Mr. Dennett?

Mr. BEHRENS. No, sir.

Mr. BRANDEIS. You are sure you have not?

Mr. BEHRENS. Quite sure.

Mr. BRANDEIS. You never addressed any written communications of any kind to Mr. Dennett?

Mr. BEHRENS. I am quite sure I never did.

Mr. BRANDEIS. You are sure of that as of anything you have testified to?

Mr. BEHRENS. Well, I would think so, because I do not remember of having written a letter to Mr. Dennett or communicating with him on any matter whatever.

Mr. BRANDEIS. And is it a fact that you have had no business dealings of any kind with Mr. Dennett?

Mr. BEHRENS. It is a fact that outside of this particular matter that I refer to, where I attempted to influence him to consent to the improvement, that I never had any dealings with Mr. Dennett of any kind.

Mr. BRANDEIS. There is one of the papers that I wish to use in connection with this witness, Mr. Chairman, but I will pass from that for a moment. You are Adolph Behrens, I believe?

Mr. BEHRENS. Yes; I am.

Mr. BRANDEIS. And your business is real estate?

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS. At Seattle, Wash.?

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS. This card that I have here is one of your cards, is it not?

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS. Now, I wish you would tell me whether you do not now remember having written this:

Mr. DENNETT:

Can you meet R. H. Thompson at his office at 2 o'clock. Please 'phone me when you get this.

BEHRENS.

Mr. BEHRENS. Yes, sir; I wrote that.

Mr. BRANDEIS (reading):

"Call up Main 221."

Mr. BEHRENS. Yes, sir; I remember leaving that card. I did not know that I had written. I supposed that I had said it verbally to the party with whom I left it. That is correct.

Mr. VERTREES. I introduce that card as evidence.

The CHAIRMAN. It is admitted.

(The card referred to is as follows:)

Phones: Main 709.

Ind. 1230.

ADOLPH BEHRENS,
REAL ESTATE,
518-519 New York Block,

Notary public.

Seattle, Wash.

(On back:) Mr. Dennett: Can you meet R. H. Thompson at his office at 2 o'clock? Please phone me when you get this. Behrens. Call up Main 221.

Mr. BRANDEIS. Now, Mr. Behrens, do you remember ever meeting on the train Mr. George Kibby Turner.

Mr. BEHRENS. No, sir; I do not.

Mr. BRANDEIS. Let me read to you this statement and tell me whether there is anything in that statement, which I may say is handed me by George Kibby Turner, which is not correct [reading]:

MEMORANDUM OF CONVERSATION WITH ADOLPH BEHRENS.

I met Mr. Behrens on the train on the way to Seattle the last part of November. We started talking on the train and he finally gave me his card to identify him.

It was such a card, I assume, as I have introduced in evidence.

Mr. BEHRENS. Yes, sir.

The CHAIRMAN. Is that a document which has been offered in evidence?

Mr. BRANDEIS. It is a document which I am inquiring of the witness about.

The CHAIRMAN. Is it a document that came from the department?

Mr. BRANDEIS. No, sir; it is a document, one of the few, that came to me direct [reading]:

The conversation was brought up, as I remember it, in connection with interviews by Mr. Ballinger in the newspaper in answer to articles which had appeared in Hampton's. Mr. Ballinger stated that—in these, as I remember them—he was not attorney for the Lippy-Davis group of claimants. Something had been said in the article concerning his own stock in this group. Mr. Behrens said that Mr. Ballinger did not own stock in the companies, but he certainly acted in the capacity of attorney for the group in which Mr. Behrens was himself interested.

Concerning Mr. Dennett, Mr. Behrens said that Mr. Dennett was a wealthy man and that he had made a great deal of money in land speculation in Seattle. Mr. Behrens said that he knew this, because he himself had acted as Mr. Dennett's agent in these transactions, and, as I understood it, was still his agent in the management of Mr. Dennett's real estate in Seattle.

The conversation was more or less protracted, but this is the substance of it.

Now, Mr. Behrens, will you take that statement which I have just read to you and say whether, after reading, you are able to recall, as you were after I showed you that card with your writing on it, anything in regard to the circumstances?

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS. Are you?

Mr. BEHRENS. Why, I do not remember anything about this conversation. I will say, however, that I have never said to anyone that I acted as Mr. Dennett's agent. I will make that statement. I will further make the statement that I have never said that Mr. Ballinger acted as attorney for the Alaska Petroleum and Coal Company. I will make these statements absolutely.

Mr. BRANDEIS. Now, will you take that statement line by line, and, in the first place, I will ask you do you remember having any such conversation? This was only last November—any such conversation on the train as is there set forth?

Mr. BEHRENS. No, sir; I remember no such conversation in which I made this statement. I certainly do not.

Mr. BRANDEIS. Do you remember any conversation that is anything like that?

Mr. BEHRENS. No, sir; nothing like it. I have had a number of conversations on the train with different parties, but nothing like this.

Mr. BRANDEIS. Is it a custom for you to distribute your cards on the train?

Mr. BEHRENS. When I am asked to do so; yes, sir.

Mr. BRANDEIS. Did he ask you for your card?

Mr. BEHRENS. I do not know; most likely he did; but I do not remember this particular party at all.

Mr. BRANDEIS. It is not such a common occurrence that you in the month of November meet gentlemen in the train and give them your card, is it?

Mr. BEHRENS. I do not know; it depends on circumstances, very often—

Mr. BRANDEIS. Just think now, Mr. Behrens; just stop and think, and say whether you can recall any other instance in the month of November when you gave a gentleman one of these cards of yours in a train going to Seattle?

Mr. BEHRENS. Yes, sir; I can.

Mr. BRANDEIS. Who was the other gentleman that you gave your card to?

Mr. BEHRENS (referring to memorandum book). A gentleman by the name of F. H. Sammis, of Spokane, Wash.

Mr. BRANDEIS. What was the date on which you gave him that card?

Mr. BEHRENS. That was on a trip from Chicago to Seattle, when we were nearing Spokane, where he was getting off the car.

Mr. BRANDEIS. What was the date, I asked you?

Mr. BEHRENS. I have not the date.

Mr. BRANDEIS. It is the date that I asked you for in my question.

Mr. BEHRENS. On that same date?

Mr. BRANDEIS. My question was confined to a date in the month of November of 1909.

Mr. BEHRENS. This was in the month of November, 1909.

Mr. BRANDEIS. It was?

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS. On your way to Seattle?

Mr. BEHRENS. Yes, sir; on the way to Seattle.

Mr. BRANDEIS. Aside from that instance, which you have been able to verify from the book, do you recall any other?

Mr. BEHRENS. I do not.

Mr. BRANDEIS. Perhaps if you look at that book you might see some reference to Mr. George Kibby Turner. Will you not examine your book and see whether that important entry is also there recorded?

Mr. BEHRENS. No, sir; that name is strange to me and for that reason I did not look at the book.

Mr. BRANDEIS. Will you have the goodness to look at your book?

Mr. BEHRENS. I can, but I know that the name is not there. I am satisfied of it.

Mr. BRANDEIS. Will you have the goodness to look at your book covering the last part of November?

Mr. BEHRENS. This is not a regular diary; it is simply a memorandum book.

Mr. BRANDEIS. Well, it is not a very large book. It is a book that you had the last part of November?

Mr. BEHRENS. Yes, sir; and I made that entry there on the trip in November going from Chicago to Seattle, and there is nothing here below there or beyond that that indicates I made any other memorandum at that time.

Mr. BRANDEIS. You have made so thorough a search that you are willing to have the committee believe from your investigation that there is no such name there?

Mr. BEHRENS. I am satisfied that there is no such name there, yes, sir.

The CHAIRMAN. Let me ask you who is this Kibby Turner that you refer to?

Mr. BRANDEIS. George Kibby Turner is a gentleman, I think of some distinction. He is connected with McClure's magazine.

The CHAIRMAN. Perhaps you had better have him verify that letter.

Mr. BRANDEIS. I shall be very glad to have him called at the time if the committee desires.

The CHAIRMAN. Call him to verify that letter.

Mr. BRANDEIS. This is a statement transmitted with the letter.

Mr. GRAHAM. The conversation, rather than the letter is what would have to be verified. I take it.

Mr. BRANDEIS. Yes, sir. I would like you now, Mr. Behrens, to take that statement and see whether upon the reading of that statement, as you go down step by step in it, there is anything that you remember or which you fail to remember.

Mr. BEHRENS. I had a number of conversations on the train at that time. I usually talk a good deal like other people, and there is no doubt but that I gave him my card, or somebody my card. I do not remember this particular man that you are speaking of. I know, however, positively that I have never made the statement that Mr. Ballinger was attorney for the Clark-Davis Company, because I do not know that he was.

Mr. BRANDEIS. Will you read just what Mr. Turner says in this statement that you did say?

Mr. BEHRENS. Yes, sir; I understand. I have read this all right; certainly.

The CHAIRMAN. He has been over that ground once. He said he never made such a statement before.

Mr. BEHRENS. No, sir; if I had made such a statement it would not be true, because I did not know that he had been. I will say that I am not closely connected with the Clark-Davis Company, and I do not really know. Mr. Ballinger might have been attorney and I might not know it; but I did not know him as attorney for the Clark-Davis Company. I will make that statement. But I am not closely connected with the Clark-Davis Company.

Mr. BRANDEIS. Then the statement of conflict between you and Mr. Kibby Turner, which you and the chairman suppose to exist, does not exist, upon a more careful consideration?

The CHAIRMAN. There is no conflict at all. Mr. Turner is not before the committee as yet.

Mr. BRANDEIS. What this memorandum says is this:

Mr. Behrens said that Mr. Ballinger did not own any stock in the companies -

That means the Lipp-Davis Company, as referred to above—

but he certainly acted in the capacity of attorney for the group in which Mr. Behrens was himself interested.

Now, that is the statement that I have special reference to.

Mr. BEHRENS. I do not see how I could have made that statement, because I really did not know whether Mr. Ballinger owned stock in that company or not.

Mr. BRANDEIS. You made the statement that you had never written anything to Mr. Dennett, yet that was not so.

Mr. BEHRENS. That is the card that was left there. I presume I left the card. That is very easily explained.

Mr. BRANDEIS. You have made another statement. You made a statement that there never had been any report in regard to fraud in regard to the group of claims or the claim which Adolph Behrens held in the Alaska field.

Mr. BEHRENS. I never knew of any.

Mr. BRANDEIS. You did not say that.

Mr. BEHRENS. That is what I mean when I say there had not been. I am quite sure there is not.

Mr. BRANDEIS. Let me call your attention to this, as to whether you did or not. This is a report of Horace Tillard Johns, dated December 1, 1909, as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., December 1, 1909.

The honorable COMMISSIONER OF THE GENERAL LAND OFFICE,
Washington, D. C.

SIR: Referring to the application of the Alaska Petroleum and Coal Company, dated January 5, 1909, for patent to the hereinafter mentioned coal lands, I herewith submit the following report:

On November 11, 1902, the Alaska Petroleum and Coal Company was incorporated under the laws of the State of Washington by Thomas S. Lippy, Clark Davis, Rolland J. Mahoney, Otto E. Sauter, Henry R. Harriman, George F. Cotterill, and John Schram. The capital stock of said company was \$5,000,000, which was divided into 5,000,000 shares at \$1 per share.

Mr. OLMSTED. Mr. Brandeis, on what page do you find that?

Mr. BRANDEIS. This is one of the documents produced by the Interior Department and not yet introduced in evidence. Mr. Sleeman will be able to tell us in answer to what call—

Mr. OLMSTED. That does not make any difference. I thought it was in print.

Mr. BRANDEIS. No, sir. It proceeds:

At a meeting of the stockholders of said corporation held in March, 1903, it was ordered that 50,000 additional shares of stock be issued for the purpose of raising funds to acquire coal lands in Alaska. Pursuant to the contemplation of the said corporation for the acquisition of coal lands, the following coal declaratory statement was made by the parties and on the dates following:

Then follows several of these gentlemen's names, among them—

No. 39, H. R. Harriman, December 1, 1904; No. 40, Adolph Behrens, December 1, 1904.

That is you, this same Adolph Behrens?

Mr. BEHRENS. Yes, sir; I think so.

Mr. BRANDEIS. Then follows the other list, including Charles W. Davis and Thomas S. Lippy. Those were associates of yours, were they not?

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS. And the Alaska Petroleum and Coal Company was a company in which you participated, and which dealt with the coal lands and the oil there, or supposed to be in Alaska, was it not?

Mr. BEHRENS. I think so.

Mr. BRANDEIS. It continues:

At a meeting of the stockholders of said company, held January, 1905, it was ordered that negotiations be had with certain California parties looking to the development of the coal areas of the said company in Alaska. H. R. Harriman, in an affidavit made before the undersigned and former Chief of Field Division L. R. Glavis, on June 29, 1909, stated as follows:

By the way, this is the very day, June 29, 1909, that you referred to a while ago, is it not?

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS. And you knew of this affidavit, I presume, that Mr. Harriman had made?

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS. I will read it. It is as follows:

It must be rather apparent from the situation that I have indicated that our first contemplation of that property was as a group. We had to have the question of how to group them, and the use and benefit, until we got some legislation. But it was the intention to group them as soon as it could be legally done. Our first idea was a lease or development contract. * * * The company certainly expended a good part of the money. A good deal was paid out for individuals, but there was never any statement until they had taken it over. * * * When the new laws were passed allowing the consolidation of the coal claims, then each of the claimants assigned to the Alaska Petroleum and Coal Company, which was carrying out their contemplation at the time they first located this land. The moral obligation, if you please, would have been as fully met in the mind and from the point of view of the locator by the development contract and royalty as it would by an assignment for consideration. These assignments were given for a fair consideration which varied. Personally, my interest in the petroleum company is sufficient that the question of consideration would be more like putting money from one pocket into the other, but at the same time each claimant exacted and received a fair consideration.

At the same time the Alaska Petroleum and Coal Company first heard of the existence of coal in the vicinity of Katalla they paid \$600 for an expert to exploit the field, and after the expert returned and reported favorably on the coal I and each claimant who gave power of attorney to Mr. A. B. Hunt gave them with the understanding that the company of whom each of the coal claimants was a member would further exploit and develop the field. * * * This understanding existed with the company, otherwise they would not have gone ahead and expended the money in the development of the claims. The coincidence of the situation was that the company, as a company, and the individual locators were one and the same people. There was not a third party that had to be consulted on any of these transactions, so it never became a matter of record.

This is corroborated by T. S. Lippy, Adolph Behrens—

That is yourself?

Mr. BEHRENS. Yes, sir; and O. E. Sauter.

Mr. BRANDEIS. Yes; he is next on the list—

J. L. Moseley, Cleo C. Davis, Charles W. Davis, Clarke Davis, Albert S. Hunt, and John Schram. Of the two remaining claimants, P. J. Mahoney is dead, and we were unable to see G. F. Cottrell.

Is it true that Mr. Mahoney was dead?

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS (continues reading):

In addition to the above corroborative affidavit of Charles W. Davis, of the Harriman affidavit, he stated in an affidavit dated April 20, 1908:

"My brother, Clarke Davis, about five years ago, filed me on a coal claim in Alaska. He told me that if possible we would all work the claims together. My brother is paying all the money in on this claim, and I am just letting him handle it as he thinks best."

Then follows the affidavit of J. L. Moseley, and then follows further statements in regard to the company. Everything that I have said is true, is it not?

Mr. BEHRENS. I think so, pretty close; yes, sir.

Mr. BRANDEIS. Then follows a statement in regard to the books, and it continues:

In view of the foregoing, I respectfully recommend that cancellation proceedings be instituted against the said entries. The charges upon which said proceedings should be based are as follows:

(1) That claim was not initiated in good faith.

(2) That claim was initiated for the use and benefit, in whole or in part, of others than entryman.

(3) That entryman did not develop and pay expenses in connection with said claim with his own individual funds.

(4) That entryman had a tacit agreement at time of filing to consolidate and assign his claim with other claims to the Alaska Petroleum and Coal Company.

(5) That entryman was a stockholder of said company at time claim was initiated.

(6) That entryman did not give power of attorney to locate after swearing to notice of location or declaratory statement—but before.

And then follow the exhibits consisting of affidavits, prospectuses, and circular letters, in all thirty-seven affidavits, signed, "Respectfully, Horace Tillard John, Special Agent."

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS. Now, Mr. Behrens, have you any doubt as to the incorrectness of your statement that a report had been made recommending the cancellation of your entries in connection with others for fraud?

Mr. BEHRENS. I will say that this is the first time that I have heard of it, but I understood these claims were passed to patents. I did not know. The statements there made in that affidavit, I guess, are practically true, and if that constitutes a fraud the claims will undoubtedly be canceled, and I think if they are fraudulent claims they probably should be. But this is the first time that I have heard that those claims were held up or that there was any adverse report on them. I will state frankly that that is the truth.

Mr. BRANDEIS. Then, if this report and the affidavits are true, which is stated here, they involve, do they not, necessarily the fact that the original statements made in the filing of the declaratory statement of location are untrue and were perjury?

Mr. BEHRENS. Well, I do not know as to that.

Mr. BRANDEIS. Is that not a fact?

Mr. BEHRENS. I do not know as to that.

Mr. GRAHAM. I think the latter part of that question ought to be stricken out.

Mr. BEHRENS. No, sir; I do not think so.

Mr. BRANDEIS. Then I will put the question again without the last part.

Mr. GRAHAM. I do not think he ought to be required to answer the last part of that question.

Mr. BRANDEIS. I think you are entirely right. You were an officer of this company, were you not, Mr. Behrens?

Mr. BEHRENS. No, sir; never.

Mr. BRANDEIS. You have no knowledge of what disposition was made of the stock of this company?

Mr. BEHRENS. It was sold, and development was made for oil, that is, there was drilling for oil there. There were \$75,000 or \$100,000 spent prospecting for oil. They had a lot of oil land there.

Mr. BRANDEIS. Was all of this stock sold?

Mr. BEHRENS. I do not know anything about that. I am not very closely in touch with the company.

Mr. BRANDEIS. You were a stockholder, were you not?

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS. And rather an important stockholder of this company, were you not?

Mr. BEHRENS. No, sir; I was not so considered.

Mr. BRANDEIS. Well, I do not mean important. Your modesty would prevent your stating that——

Mr. BEHRENS. I think so.

Mr. BRANDEIS. In a sense of important with reference to the control of the company, but important in the sense of the amount of your interest.

Mr. BEHRENS. Well, I had quite a little interest in it; yes, sir.

Mr. BRANDEIS. You did have?

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS. And you attended stockholders' meeting, did you not?

Mr. BEHRENS. Not very much.

Mr. BRANDEIS. Do you remember anything, Mr. Behrens, about the disposition of any portion of the capital stock of this company for purposes other than sale to the public?

Mr. BEHRENS. Why, I do not know. Yes; there were some given to stockholders—incorporators of the company.

Mr. BRANDEIS. There were some given to stockholders?

Mr. BEHRENS. Yes.

Senator SUTHERLAND. Let me interrupt you, Mr. Brandeis. Are you inquiring about an Alaskan company now?

Mr. BRANDEIS. I am inquiring about this Alaskan Coal and Petroleum Company, which was the company that was recommended—which held these claims which were recommended for cancellation.

Senator SUTHERLAND. All I wanted to know is he interested in the lands in Alaska?

Mr. BRANDEIS. Wholly—is that not right, Mr. Behrens?

Mr. BEHRENS. All their land is in Alaska.

Mr. BRANDEIS. It is land taken under these claims.

The CHAIRMAN. Mr. Brandeis, let me see if I understand him. Is he one of the Cunningham group, or is his claim in the Cunningham group?

Mr. BRANDEIS. He is one of the Hunt group.

The CHAIRMAN. As I understand it, those have not gone to final entry, have they?

Mr. JAMES. Mr. Behrens thought they had; the report had been made that they had.

Mr. BRANDEIS. Mr. Behrens stated that he thought they had gone even beyond that and were ready for patent, if they had not been patented.

The CHAIRMAN. From the record my recollection is that there were only a very few cases, three or four cases, outside of the Cunningham group that had gone to final entry.

Mr. BRANDEIS. I do not think, Mr. Chairman—I do not undertake to state what the fact is—but I think the record that we are referring to is not the record of to-day, but a record of some time back. The situation may not have changed between that time and to-day. I asked him—you may remember that this investigation arose out of my inquiry of him—whether he was not a claimant of one of the Hunt group, against which proceedings to cancel for fraud had been entered, and it now appears——

The CHAIRMAN. My idea of the question was—I have a vague recollection; I may be mistaken—that none of the Hunt group, so far as I can recall, had ever gone to final entry. You know what I mean?

Mr. BRANDEIS. I do, but I am not able to answer whether that impression is correct or not. I shall try to ascertain the facts and endeavor to advise the committee.

I ask you, Mr. Behrens, whether it was not a fact that a portion of this stock of the Alaska Petroleum and Coal Company had been set apart for some purpose other than sale to the public?

Mr. BEHRENS. I could not give you a very definite detail of the organization of that.

Mr. BRANDEIS. Will you give us the most definite detail that you are capable of?

Mr. BEHRENS. Why, I do not know as to the exact disposition of that stock; I could not say as to that.

Mr. BRANDEIS. Tell us what you do know.

Mr. BEHRENS. I do not know very much about it; it is quite a while ago.

Mr. BRANDEIS. How much of the stock did you get?

Mr. BEHRENS. Why, something like about a hundred thousand shares, I guess.

Mr. BRANDEIS. That is, you got a hundred thousand dollars of the stock?

Mr. BEHRENS. Well, shares.

Mr. BRANDEIS. The shares were a dollar apiece, were they not?

Mr. BEHRENS. That was the capital; yes, sir.

Mr. BRANDEIS. And that was what represented—this hundred thousand dollars represented your one claim of 260 acres?

Mr. BEHRENS. It did not.

Mr. BRANDEIS. What did it represent?

Mr. BEHRENS. When that company was organized there was no coal located; that was located long after the company was organized; there were no coal claims taken up. This represented the leases on oil land that we had and contracts with the Copper River Coal and Oil Company, and individuals, and so on.

Mr. BRANDEIS. Well, what was this claim that you assigned to this company, and which, with others, had been recommended for cancellation for fraud—what consideration did you receive for that from the company?

Mr. BEHRENS. I think it was 10,000 shares of stock.

Mr. BRANDEIS. That is, you received then this 10,000 shares in addition to the hundred thousand you had received before?

Mr. BEHRENS. Yes, sir.

Mr. BRANDEIS. And how many claims were there, the claimants for which each received this 10,000 shares?

Mr. BEHRENS. I do not know. I know of only one other claimant where there was 10,000 paid for it; that was all.

Mr. BRANDEIS. Do you not know of the disposition of some of this stock that was set aside for some purpose other than distribution among the stockholders who contributed their claims?

Mr. BEHRENS. Why, this was a subsequent proposition. You do not seem to understand the situation.

Mr. BRANDEIS. I will be patient if you will explain it to me.

Mr. BEHRENS. I will explain it to you. The company was organized in the first place without any idea of locating coal lands at all, and they bought the town site of Katalla, and own that now; a portion of that has not been sold; they scrip that. And they made a contract with the Copper River Coal and Oil Company for a lot of their coal lands and located oil lands—located a lot of oil lands, and they sent machinery up there and prospected for oil. This coal was a subsequent idea, of taking this land.

Senator FLETCHER. Did they strike oil?

Mr. BEHRENS. No; the oil field was not ripe.

Mr. BRANDEIS. Well, you have yet, Mr. Behrens, failed to answer the particular question that I put—that is, whether there had not been set apart a definite lot of this stock for some purpose other than for the distribution of the stock among the stockholders who transferred to it their claims?

Mr. BEHRENS. Why, yes; there was a lot of stock put in what they called the treasury for development purposes.

Mr. BRANDEIS. What was that stock that was put into the treasury?

Mr. BEHRENS. Well, I do not know the amount; I could not tell you, but I think it was several million shares.

Mr. BRANDEIS. Was there not some stock that was laid aside for some purpose other than what would ordinarily be correctly termed the development of the corporation?

Mr. BEHRENS. Why, I do not know of any.

Mr. BRANDEIS. Do you not know of a certain block of 150,000 shares of stock in this company that was set apart for some purpose that in no way would be described as development purposes of a mine?

Mr. BEHRENS. No; I know of no such block of stock as you describe.

Mr. BRANDEIS. Tell me, now, what you do know of blocks of stock.

Mr. BEHRENS. Not a great deal, except I know what stock was issued to me, and I know what stock was issued to some other stockholders of the concern; that is about all. And I know of a certain amount being set aside for development purposes. That is usual in the organization of a company.

Mr. BRANDEIS. Was there not some set aside in this company for a purpose which was less usual than to be sold as treasury stock?

Mr. BEHRENS. You mean for legislative purposes?

Mr. BRANDEIS. Yes; that is just what I mean.

Mr. BEHRENS. I thought that was what you were hinting at, but I don't know of anything.

Mr. BRANDEIS. Well, you are a mind reader. Now tell us about that block.

Mr. BEHRENS. I know nothing about anything of that kind; I know of no block of stock being used for that purpose.

Mr. BRANDEIS. I ask you now—I had not got so far as the use—I am asking you to tell us about the stock that was set aside for that purpose?

Mr. BEHRENS. I know of no such stock, but I thought that was what you were getting at, because you were hinting pretty broadly.

Mr. BRANDEIS. That was very clever of you. Tell us what you remember about the distribution of the stock in that company, Mr. Behrens.

Mr. BEHRENS. Why, I could not, Mr. Brandeis; I could not give you anything except a number of stockholders; I could mention that they had certain amounts. I told you the reason was that my partner had charge of the matter and I was not paying any attention to it.

Mr. BRANDEIS. Was he what they call a "wicked partner," Mr. Behrens?

Mr. BEHRENS. Well, he is dead now.

Mr. BRANDEIS. All the wickedness is centered in the dead?

Mr. BEHRENS. No. There is some wickedness still in the living.

Mr. BRANDEIS. Tell us what you remember, now, about this block of stock set apart for legislative purposes.

The CHAIRMAN. He has never said anything about that.

Mr. BEHRENS. I do not know anything about that.

Mr. BRANDEIS. What?

Mr. BEHRENS. I do not know of any block of stock for that purpose.

The CHAIRMAN. He has answered that.

Mr. BRANDEIS. How did you happen to guess that my inquiry, seemingly innocent, was directed to stock set apart for legislative purposes?

Mr. BEHRENS. Why, I have heard you here for about seven or eight days, at different times—I have been sitting here watching you, and I knew you were leading up to that.

Mr. BRANDEIS. Now, Mr. Behrens, I would like to have it appear in the record, if it is a fact, as I believe the record will bear me out, that there has never been anything said by me, either in the examination of you or of any other witnesses that came before this committee, which in the remotest way hinted at the use of any of the stock of any of the Alaska coal companies for improper use for legislative purposes.

Mr. BEHRENS. I did not mean it in that way. I meant that your insinuations, and so forth, were very farfetched. I knew what you were getting around to.

Mr. BRANDEIS. But I do not think I am properly subject to that criticism, Mr. Behrens. But is there not something else that you remember about that?

Mr. BEHRENS. No; I do not.

Mr. BRANDEIS. Do you not remember, Mr. Behrens, what really occurred—was it only legislative purposes that this stock was to be used for?

Mr. BEHRENS. Why, I do not know of any block of stock being set aside—

Mr. BRANDEIS. Was there any other purpose—what other purpose do you think of?

Mr. BEHRENS. I do not know of any purpose; I really do not. If I did I would tell you.

Mr. BRANDEIS. Well, is your knowledge of this as slight as it was of the report of cancellation for fraud, and of this conversation that is alleged to have been had with you by George Kibby Turner?

Mr. BEHRENS. It would simply confirm that I do not know very much about the company's business; otherwise I should have known that these claims were held up for fraud, and shows I am not in very close touch with the management of this company.

Mr. BRANDEIS. This is quite a recent transaction—the recommendation of fraud; that is quite recent, and it is an official document that may not have come to your notice. It is not like the transactions of your own company.

Mr. BEHRENS. No; that is right.

Mr. BRANDEIS. Have you a copy of the papers with you—did you bring with you any records of this Alaska Coal and Oil Company?

Mr. BEHRENS. No; I did not.

Mr. BRANDEIS. Have you any of the papers?

Mr. BEHRENS. No; I have not, because I have no interest in the company whatever. I did not like the management of the company, and I practically sold out of the company.

Mr. BRANDEIS. They were not very successful, were they?

Mr. BEHRENS. They spent a lot of money, and they had a good many prospects of striking oil, but just about the time we would strike it something would give way and we would not strike it.

Mr. BRANDEIS. You were disappointed?

Mr. BEHRENS. Yes, sir; the field was not ripe.

Mr. BRANDEIS. So you can not tell us anything more about this 150,000 shares of stock or anything else?

Mr. BEHRENS. No; I could not.

Mr. BRANDEIS. I think that is all, Mr. Vertrees.

Mr. JAMES. Mr. Behrens, you stated that Mr. Dennett did not go out to dinner with you. Did you invite him to go to dinner with you?

Mr. BEHRENS. No, sir.

Mr. JAMES. Or to lunch?

Mr. BEHRENS. No, sir; I did not.

Senator SUTHERLAND. I would like to ask you a question, Mr. Behrens.

Mr. BEHRENS. Yes, sir.

Senator SUTHERLAND. You speak about owning 100,000 shares of stock, worth a hundred thousand dollars—is that the par value of the stock?

Mr. BEHRENS. Yes.

Senator SUTHERLAND. What was it worth on the market?

Mr. BEHRENS. Oh, I do not know; I presume about 20 cents.

Senator SUTHERLAND. Twenty cents a share?

Mr. BEHRENS. Twenty cents, or 25 cents a share.

Senator SUTHERLAND. That is what it would sell for?

Mr. BEHRENS. Yes, sir.

Senator SUTHERLAND. Has it any market value now?

Mr. BEHRENS. Oh, yes; that is about the market value now, I believe. I haven't paid much attention to it lately.

Mr. JAMES. How much land was it you had out there?

Mr. BEHRENS. You mean the coal lands?

Mr. JAMES. No; whatever lands you had.

Mr. BEHRENS. The oil lands, or what?

Mr. JAMES. Anything you may call it, whether it was oil land or coal land.

Mr. BEHRENS. They had something like about 2,000 acres of coal land in those 8 or 12 different claims. They had quite a little oil land. I do not know how much—a number of thousand acres that they were prospecting for oil.

Mr. JAMES. This oil stock you say was worth 20 cents a share?

Mr. BEHRENS. Yes; it has sold as high as 25 cents; I guess it is probably worth 15 or 20 now; probably 25 cents now.

Mr. JAMES. Did you have 160 acres of this group?

Mr. BEHRENS. Yes, sir.

Mr. JAMES. You put that in and got out 110,000 shares, did you?

Mr. BEHRENS. No; the hundred thousand shares had nothing to do with that at all. Really, as a matter of fact, when we took up those oil lands, we were all heavy stockholders in the company, and it was our intent, if we could ever legally do so, to turn that coal over to the company; that was the intention. There was no coal-land law for Alaska at that time, and Congress attempted to pass a coal law by making the coal-land laws of the United States applicable to Alaska, but they did not at the same time extend the survey over

Alaska. That was useless. There were no coal laws under which any location could be made, but prospectors went out and located and developed coal lands with the idea that they all did have some rights.

The CHAIRMAN. What years were those?

Mr. BEHRENS. That was about 1903, I think it was.

The CHAIRMAN. It was not until 1904 that you had a law under which you could really locate claims in Alaska?

Mr. BEHRENS. I think it was about that time.

Senator PURCELL. You say that you own the town site of Katalla?

Mr. BEHRENS. Yes, sir.

Senator PURCELL. How did you acquire it?

Mr. BEHRENS. By scrip.

Senator PURCELL. What do you mean by that?

Mr. BEHRENS. Why, I do not know; some kind of scrip; soldier's additional homestead scrip or something of that kind. We bought it of a settler that had first located it and was holding it—a kind of squatter—and then scrip was obtained and the town site was scripted and patented.

Senator PURCELL. So that you used some scrip in acquiring the town site?

Mr. BEHRENS. Yes; so I understand.

Mr. OLMSTED. What was it you got for your interest in 160 acres of coal lands?

Mr. BEHRENS. A hundred thousand shares of stock.

The CHAIRMAN. Worth 20 cents on the dollar?

Mr. BEHRENS. Something like that.

Mr. BRANDEIS. Do you remember that this town site of Katalla was obtained through certain soldier's additional homestead scrip that Clark Davis was interested in?

Mr. BEHRENS. That is the identical scrip.

Mr. BRANDEIS. And that Mr. L. R. Glavis investigated and recommended that the patents should not issue for it, without further recommendation, and that Commissioner Ballinger ordered, on the 12th of December, that they should issue, without making that recommendation?

Mr. BEHRENS. I do not know anything about that.

Mr. JAMES. Investigation, you mean.

Mr. BRANDEIS. Investigation, I mean.

Mr. BEHRENS. I do not know anything about that, Mr. Brandeis.

Mr. BRANDEIS. Now, I want to know whether you remember this, in regard to a prospectus put out by the company to secure additional funds—

The CHAIRMAN. What is the date of that?

Mr. BRANDEIS. Will you allow me a moment to look over this? The only date I see here is January 8, 1907, but I am not sure whether that January 8, 1907, is the date of the report to the stockholders, or what. This is the circular which is one of the exhibits referred to by Mr. Jones [reading]:

THE NEW PENNSYLVANIA.

On account of the wonderful discoveries of high-grade oil and coal, the Kayak district has been aptly so called. We have:

Coal.—There is no other coal with which it is likely to come into general competition with which it is to be compared, for it is far higher in heating power and in purity than any coal that is mined upon the Pacific coast, either in the United States, Canada, or Australia. (Bulletin 225, United States Geological Survey, p. 375).

Fifty millions of tons of this coal above the creek level in our big 20-foot vein. This is only one of our veins.

Oil.—The finest in the world. Read what the Government says about it:

[Bulletin 225, U. S. Geol. Sur. 370.]

Products.	Alaska.	Pennsyl- vania.	Ohio.	Beaumont.
Bensine.....	21	16½	10	2½
Burning oil.....	51	54	50	40
Residuum.....	28	29	40	57½
Specific gravity (degrees Baumé).....	39.1			22

This oil is worth \$1.50 to \$2 per barrel at the well; is a pure paraffin oil. A large flow of oil has been struck by our neighbors, the English company. The best oil experts in the world have visited this field, many of them spending two seasons in the district. Burls, of London; Schman, of New York; Arata, of California; Worthington, of the Standard Oil Company; Doctor Martin, of the United States Government, and many others are all agreed that the indications point to immense deposits of this high-grade oil.

Town site.—In this entire district there is just one place for a town. This particular piece of land was occupied by old settlers in this district who had lived there for twenty years. This company purchased their rights, and have since covered the land with soldier's additional-homestead scrip, also the riparian rights to the water front. Eighteen months ago we had at this place a couple of log cabins and a few tents. To-day we have about 40 houses, the population varying from two to five hundred, besides a deputy United States marshal's office, recorder's office, hotel, stores, and quite a community. The company owns a two-story eight-room frame headquarters building in the town, and lots are selling at \$200 each.

Assets.—(1) 12,000 acres of oil land; (2) 1,800 acres of coal land.

Mr. BRANDEIS. Now, that statement was not true, was it?

Mr. BEHRENS. No; I do not think it was.

Mr. BRANDEIS. You know it was not, do you not?

Mr. BEHRENS. Why, of course, I know it was not. I was not one of the officers who signed it, and that was one of the things that got me out of connection with the management.

Senator FLETCHER. Mr. Behrens, did you say that the initial entry by you for this 160 acres of land was with the purpose and intention of turning it into this company?

Mr. BEHRENS. If it could be legally done; that was always the reservation we had.

The CHAIRMAN. Are you through with the witness on both sides?

Mr. BRANDEIS. Who was your partner?

Mr. BEHRENS. R. J. Mahoney.

Mr. BRANDEIS. He is dead?

Mr. BEHRENS. Yes.

Senator FLETCHER. When you sold that 10,000 shares that you obtained for this land, how much did you realize on it?

Mr. BEHRENS. I do not know; I think probably about \$1,500, something like that.

Mr. VERTREES. When did you sell out, Mr. Behrens?

Mr. BEHRENS. I do not know; it was some time in 1909.

Mr. VERTREES. 1909?

Mr. BEHRENS. I think so.

Mr. VERTREES. You were about to make some statement about that Clark Davis scrip?

Mr. BEHRENS. No; nothing about the scrip. I was going to make some statement about that card.

Mr. VERTREES. Before you get to that—those are not mineral lands at Katalla?

Mr. BEHRENS. No.

Mr. VERTREES. They were lands open to settlement and scrip?

Mr. BEHRENS. Yes; I think so.

Mr. VERTREES. You were going to make some statement about the card?

Mr. BEHRENS. Yes. Now, at the meeting in the office of corporation counsel Scott Calhoun, there was a map showing this improvement which was incorrect, and Mr. Dennett kind of "flew the track," so to speak, on indorsing the improvement, and that was the reason why I made the appointment with him to meet at the city engineer's office in order to go over the matter and see if he could not arrange matters, and that was the card that I left undoubtedly with the idea of making that arrangement. I had forgotten it; I had supposed that I had left this verbally, but it seems I left this card. That is my writing.

Mr. VERTREES. As I understood you, you never had any business communication of any kind—I mean by that a letter or communication with Mr. Dennett on the subject of land in any way—any written communication I mean?

Mr. BEHRENS. No, sir; I am quite sure that I have not.

Mr. VERTREES. Do you remember where you left that card?

Mr. BEHRENS. If I remember rightly, I left that card in the land office. Now, I do not know—I may have left it with Mr. Glavis, and more than likely I did.

Senator SUTHERLAND. You do not know how the card came here?

Mr. BEHRENS. I think Mr. Glavis brought it here, probably.

Mr. BRANDEIS. Mr. Behrens, you stated in answer to a question of Mr. Vertrees that you had sold your stock in this Alaska Coal and Petroleum Company some time in 1909.

Mr. BEHRENS. I think so.

Mr. BRANDEIS. Was it after the last of November, the time when it was suggested to you that you had met Mr. George Kibby Turner on the train going to Alaska?

Mr. BEHRENS. No; I do not think so. Let me see. No; I think that it was long before that.

Mr. BRANDEIS. Are you able, through your memorandum book or any other papers you have here, to fix that date?

Mr. BEHRENS. No; I am not. This year I am keeping a diary, so as not to get mixed up; I did not last year.

Mr. GRAHAM. So that you will not get your dates mixed?

Mr. BEHRENS. Yes, sir.

The CHAIRMAN. Are both sides through with this witness?

Mr. VERTREES. I am.

Mr. BRANDEIS. And I am.

The CHAIRMAN. You are excused.

(The witness was thereupon excused.)

The CHAIRMAN. The committee will now stand adjourned until next Friday at 10 o'clock.

(Thereupon, at 5.15 p. m., the committee adjourned until Friday morning, April 1, at 10 o'clock.)

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